

STATE ALLOCATION BOARD

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<http://www.dgs.ca.gov/opsc>



Date: December 19, 2003

To: Interested Parties

Subject: **NOTICE OF THE STATE ALLOCATION BOARD IMPLEMENTATION COMMITTEE MEETING**

Notice is hereby provided that the State Allocation Board Implementation Committee will hold a meeting on Thursday, January 8, 2004 (9:30 am - 3:30 pm) at 1020 N Street (Legislative Office Building) in conference room 100 (Sacramento, CA).

The Implementation Committee's proposed agenda is as follows:

1. Convene Meeting
2. Lease Lease-Back
Review of previous discussions, including the September item to the SAB, and presentation of OPSC position on the use of EC 17406.
3. Hazardous Waste Removal Costs (AB 1008)
Discussion of the audit adjustment to the new construction grant for additional hazardous waste removal costs.
4. SFP Joint Use Program (SB 15)
Discussion of revisions to Type I-II, building reconfiguration and partner contribution for the SFP Joint Use Program.
5. Charter Schools Facilities Program (SB 15)
Discussion of eligibility determination, per-pupil project caps, site acreage limitations and other Charter program issues.

Any interested person may present public testimony or comments at this meeting regarding the issues scheduled for discussion. Any public input regarding unscheduled issues should be presented in writing, which may then be scheduled for a future meeting. For additional information, please contact Portia Jacobson at (916) 445-3159.

A handwritten signature in black ink, appearing to read 'Bruce B. Hancock'.

BRUCE B. HANCOCK
Chairperson

BBH:LM:mc

**STATE ALLOCATION BOARD
IMPLEMENTATION COMMITTEE
January 8, 2004**

**CHARTER SCHOOL FACILITY PROGRAM
REGULATION AMENDMENTS**

Background:

The Charter School Facility Program, created through Assembly Bill (AB) 14 allowed for the allocation of \$100 million to provide facilities to charter schools. On July 2, 2003 the State Allocation Board (SAB) made the first preliminary apportionments for the program to six charter schools. After the allocation, the SAB and the California School Finance Authority (CSFA) presented a joint report to the Legislature detailing the implementation of the program, description of the projects funded, and recommendations for statutory change. Senate Bill (SB) 15 (Alpert) contains some of the recommendations as well as other changes to the program.

Total Project Funding Cap:

All projects will be subject to a pupil grant cap and a total project-funding cap (TPFC). The TPFC will only be applied to those items of the full grant that have been identified as “construction” costs; site cost will be excluded from the TPFC. An applicant that qualifies for and requests the urban or multi-story allowance will have a higher TPFC than those that do not. The following chart illustrates by project grade level the pupil grant cap and TPFC:

	Pupil Grant Cap	Total Project Cap for Non-Urban/Multi-story projects	Total Project Cap for Urban/Multi-story projects
K-6	350	\$5,000,000	\$6,600,000
7-8	450	\$7,000,000	\$9,000,000
9-12 or K-12 inclusive	600	\$10,000,000	\$12,900,000

If the OPSC receives a preliminary application that exceeds the TPFC, the applicant will have the option of reducing the pupil grants requested or exclude any additional grant requests (if any) to correspond with the maximum amount allowed. This process will also be used at final apportionment.

Preliminary Apportionment Determination

The amount of funding provided to an applicant at the preliminary apportionment will be the maximum amount of funding provided, unless at the time of final apportionment the applicant qualifies for either relocation/DTSC costs or hazardous material clean-up costs. In that case, the applicant may then draw funds from the established pools. **In addition, this proposal does not contain an allowance for an inflator factor for either the costs identified as “construction” or site.**

To determine the funding for the project, the preliminary apportionment would be divided into “construction” costs and site acquisition costs, as shown below:

PRELIMINARY APPORTIONMENT DETERMINATION	
<i>Construction Costs (Full Grant)</i> Subject To The Cap	<i>Site Acquisition Costs</i> Exclusive Of Cap
<ul style="list-style-type: none"> • Base Grant – 2003/Prop 47 Level • Multi-level Construction • Site Development • Small Size Project • Urban Allowance • Geographic Percentage Factor • Labor Compliance Program Grant (Subject to the reapproval of the SFP regulations) 	<ul style="list-style-type: none"> • Site purchase • Other Site Costs (appraisal, escrow, survey, site testing, CDE review/approvals and preparation of POESA and PEA)
	<p style="text-align: center;">Pools (access at Final Apportionment)</p> <ul style="list-style-type: none"> • Hazardous Material Clean-up • Relocation and DTSC fees

The following allowances will be excluded from the Preliminary and Final Apportionment determination and the Form SAB 50-04 will be modified accordingly:

- New School Grant
- Project Assistance
- Energy Efficiency

Site Purchase and Acreage Limits

The maximum amount of acreage that may be requested for a charter school project at the time of preliminary **and** final apportionment is limited to 50 percent or less of the CDE recommended site size for a traditional school. This is determined at the preliminary apportionment by multiplying the number of pupils in the project by .00875 for K-6, .0105 for 7-8, and .01236 for 9-12. An applicant may request a higher acreage amount at the time of final apportionment, provided it is less than 50 percent of the CDE recommended site size. The maximum cost for site acquisition (site purchase and other) will be established at preliminary apportionment.

Methodology for Creating Funding Set Asides

At this point, without being able to forecast the type or number of applications that will be submitted for the upcoming filing period, it would be difficult to determine a dollar figure to set aside from the \$300 million to create a pool for hazardous material and another for relocation costs. Any figure proposed would be a best guess. Therefore, we propose the following methodology to create the two separate pools of funds.

Hazardous Material Clean-up Funding

Applicants would still be required to indicate on the preliminary application if they anticipate needing toxic funding for the project; however, the funding would not be part of the preliminary apportionment.

Process:

1. The site purchase value of all projects that requested hazardous material clean up would be totaled.
2. The above total would be multiplied by 10 percent.
3. The product would provide the dollar value to set aside from the \$300 million.

Relocation/DTSC Funding

1. The site purchase value of all projects that requested relocation/DTSC funding would be totaled.
2. The above total would be multiplied by 15 percent.
3. The product would provide the dollar value to set aside from the \$300 million.

Final Apportionment Determination

Again, the amount of funding set aside at the preliminary apportionment for site and “construction” costs is the maximum amount that may be provided at the final apportionment. Each category is separate and will not be combined into one maximum amount. The number of pupil grants requested at the time of final apportionment may not exceed the preliminary apportionment request.

At the time of final apportionment it should be known if the project will need to access funding from either the hazardous material clean-up pool or relocation/DTSC pool. Any funding provided will be up to the amount available in pool, if the request exceeds the remaining funds in either pool, any remaining amount will be placed on an unfunded list by SAB approval date.

Unused preliminary apportionments and lease payments (2004 bond funds only) will be deposited into the 2004 Charter School Facilities Account. The SAB will use any funds in the account to first fund projects on the unfunded list. If there are no projects on the unfunded list, the SAB may open a new filing period to provide preliminary apportionments to another round of applicants.

The following examples better illustrate the processes that will occur at the time of final apportionment:

Sample 1

(Qualifies for Urban and Multilevel Grants)

Preliminary Apportionment

Type of Project: Elementary (K-6)
Pupils Assigned: 350
Proposed Acres: 1
Recommended Site Size: 3.1
Total Project Cost: \$6,600,000
Total site acquisition: \$1,400,000

Final Apportionment

Type of Project: Elementary (K-6)
Pupils Assigned: 300
Proposed Acres: 0.8
Recommended Site Size: 2.7
Total Project Cost: \$6,000,000
Total site acquisition: \$2,000,000

In the event that an applicant's total project cost at the time of final apportionment is less than the preliminary apportionment, the excess amount will be returned to the Charter School Facility Account (2004). If the total site acquisition is greater at the final apportionment than the preliminary apportionment, **the project may not transfer excess funds from construction cost to site acquisition and vice versa.**

Sample 2

Preliminary Apportionment

Type of Project: Middle School (7-8)
Pupils Assigned: 400
Proposed Acres: 4.2
Recommended Site Size: 4.2
Total Project Cost: \$6,000,000
Total site acquisition: \$2,000,000

Final Apportionment

Type of Project Middle School (7-8)
Pupils Assigned: 400
Proposed Acres: 4.2
Recommended Site Size: 4.2
Total Project Cost: \$7,000,000
Total site acquisition: \$2,000,000

If an applicant receives a preliminary apportionment that is less than the final apportionment amount, **the project will not be able to exceed the preliminary apportionment amount even though the project did not reach the cap at the preliminary apportionment.**

Sample 3
(Qualifies for Urban and Multilevel Grants)

Final Apportionment Request

Type of Project: High School (9-12)
Pupils Assigned: 600
Proposed Acres: 2.4
Recommended Site Size: 7.4
Total Project Cost: \$12,000,000
Total site acquisition: \$3,000,000
Relocation: \$600,000
Hazardous Materials: \$800,000

Available funds in pools

Relocation: \$400,000
Hazardous Materials: \$500,000

If a project's relocation or hazardous material cost request exceeds the available balance in either pool, then the remaining balance not apportioned will be placed on an unfunded list. In this case, the project would receive \$400,000 for relocation and \$500,000 for hazardous material while the remaining balance of \$200,000 and \$300,000, respectively, would be placed on an unfunded list. Proceeds from lease payments or excessive preliminary apportionment amounts will be used to fund any amounts on the unfunded list based on SAB approval date.

Attachment B

Summary of Revised Charter School Facility Program Regulations SAB Implementation Committee, January 8, 2004

Section	Current Practice	Proposed Change	Justification for Change
DEFINITIONS "CHARTER SCHOOL GENERAL LOCATION" Reg Section 1859.2	In determining a median cost for site acquisition, the general location was based on the Critically Overcrowded Schools (COS) Program using source schools.	Create new definition "Charter School General Location" to mean a three-mile radius from the present or proposed location of the Charter School project as identified on the application.	The Charter School program differs from the COS that it does not use source schools. This definition will define the area to be used for the median cost calculation and provide a more accurate assessment of the real estate transactions in and around the proposed general location.
DEFINITIONS "FINANCIALLY SOUND" Reg Section 1859.2	n/a	Add reference to California School Finance Authority (CSFA) regulations.	Clarification language to properly reference both sets of regulations.
DEFINITIONS "LARGE CHARTER SCHOOL" Reg Section 1859.2	A school in which enrollment is greater than 351.	A school in which the enrollment is greater than 351.	Based on the previous round of applications submitted there was not enough of a distinction between the large, medium and small charter schools. We have increased the ranges to allow for more variance.
DEFINITIONS "MEDIUM CHARTER SCHOOL" Reg Section 1859.2	A school in which enrollment is between 101 to 350.	A school in which enrollment is between 176-350.	Based on the previous round of applications submitted there was not enough of a distinction between the large, medium and small charter schools. We have increased the ranges to allow for more variance.
DEFINITIONS "REGION 2" Reg Section 1859.2	Tulare county is in Region 3.	Move Tulare county into Region 2.	Tulare was inadvertently left in Region 3 when the distribution was originally done and demographically should have been placed in Region 2 from the onset of the program.
DEFINITIONS "SMALL CHARTER SCHOOL" Reg Section 1859.2	A school in which enrollment is not more than 100.	A school in which enrollment is not more than 175.	Based on the previous round of applications submitted there was not enough of a distinction between the large, medium and small charter schools. We have increased the ranges to allow for more variance.
PRELIMINARY APPORTIONMENT ELIGIBILITY CRITERIA Reg Section 1859.162	n/a	New legislation requires that prior to the end of the filing period that the applicant must have a charter approved or a material revision to their existing charter approved for that specific school in which they are applying. Prior to the submission of the Preliminary Charter School Application that the above must be in place. This will be incorporated into the Preliminary Charter School Application form and the applicant will be required to report the date of the charter approval or of the material revision.	As required by legislation – SB 15

Section	Current Practice	Proposed Change	Justification for Change
PRELIMINARY CHARTER SCHOOL APPORTIONMENT DETERMINATION Reg Section 1859.163.1	The preliminary apportionment calculation originally referenced the calculation used in the critically overcrowded program.	The preliminary apportionment calculation has been incorporated into the charter school section of the regulations and will be modified accordingly based on the outcome of total project cost discussion.	Clarification and ability to modify certain areas of the calculations which are specific to the charter school program.
PRELIMINARY CHARTER SCHOOL APPORTIONMENT DETERMINATION "SMALL SIZE PROJECT" Reg Section 1859.163.1 (e)	This allowance is called the Small New School Allowance and is provided if the project meets the requirements of Section 1859.83(c).	Change to allow the charter school to request a small size project, which is a project that will house no more than 200 pupils, as provided in 1859.83(b).	The basis for this change is because the New School Allowance was intended for projects that were going to be built in phases, but needed funding to provide the core facilities up front. When subsequent applications come in to add classrooms, the grant is offset. Due to the nature of the charter school program we don't envision this happening and feel that the small size project is more applicable.
PRELIMINARY CHARTER SCHOOL APPORTIONMENT DETERMINATION "USEABLE ACRES" Reg Section 1859.163.1(f)(2)	In the last round, useable acreage was determined by using CDE recommended site size as established for the COS program.	Per the new legislation, CDE has provided new numbers which are exactly half of what is used in the COS program in order to limit the amount of acreage for which each applicant can apply.	As required by legislation – SB15
PRELIMINARY CHARTER SCHOOL APPORTIONMENT SITE ACQUISITION VALUE Reg Section 1859.163.2 (3)(b)	Costs for hazardous material clean up are automatically calculated in the site acquisition costs and are provided at 150% of the appraisal or median cost.	Edits will be made to the form to allow the applicant to include a lesser amount for toxic remediation.	Cases may exist where an applicant knows that they will not need the 150% amount for clean up.
CALCULATION OF PREFERENCE POINTS Reg Section 1859.164.1 (a) and (b)	n/a	We have adjusted the low-income scales and the overcrowded scales to add more ranges.	This adjustment was done to allow for more variance and to avoid having projects end up with the same preference points.
PRELIMINARY CHARTER SCHOOL APPORTIONMENT FUND RELEASE Reg Section 1859.164.2	n/a	Regulations have been written to allow for advanced release of funds for separate design equal to 40 percent of the total project cost and/or an advance fund release for site acquisition.	As required in legislation – SB 15

Section	Current Practice	Proposed Change	Justification for Change
FINAL CHARTER SCHOOL APPORTIONMENT Reg Section 1859.167	n/a	Incorporate the language for the unrestricted Fund to include the 2004 Charter School Facilities Account.	As required by legislation – SB 15
FINAL CHARTER SCHOOL APPORTIONMENT Reg Section 1859.167	n/a	Any funds deposited back into the Unrestricted Fund in the 2002 Charter School Facilities Account or for Preliminary Charter School Applications received from February 2003 to April 1, 2003 that were not funded due to insufficient funds shall be used by the Board for other Charter School facility projects.	Per SAB Action on July 2, 2003 and SB 15.
FINAL CHARTER SCHOOL APPORTIONMENT Reg Section 1859.167	n/a	Any funds deposited back into the Unrestricted Fund in the 2004 Charter School Facilities Account shall be used by the Board for other Charter School facility projects.	As required by legislation – SB 15

ATTACHMENT C

PROPOSED AMENDMENTS TO THE
CHARTER SCHOOL FACILITY PROGRAM
SB 15 AND OTHER REGULATORY AMENDMENTS

State Allocation Board Implementation Committee Meeting, January 8, 2004

Section 1859.2. Definitions.

For the purpose of these regulations, the terms set forth below shall have the following meanings, subject to the provisions of the act:

...

"Authority" shall have the meaning set forth in Education Code Section 17078.52(c)(1).

...

"Charter School" shall mean a school established pursuant to Education Code, Title 2, Division 4, Part 26.8, Section 47600, et seq.

...

"Charter School General Location" shall mean a three mile radius from the present or proposed location of the Charter School project as identified in the chartering agreement.

...

"Classroom-Based Instruction" shall have the meaning set forth in Education Code Section 47612.5(e)(1).

...

"Final Charter School Apportionment" shall mean a Preliminary Charter School Apportionment that has been converted to a Final Charter School Apportionment in accordance with Section 1859.165.

...

"Financially Sound" shall have the meaning set forth in Education Code Section 17078.52(e)-(d)(4) and Title 4, California Business Regulations commencing with Section 10152, et al.

...

"Form SAB 50-09" means the *Application for Charter School Preliminary Apportionment*, Form SAB 50-09 (New 01/03), which is incorporated by reference.

...

"Large Charter School" shall be defined as a school in which the enrollment is greater than 351 pupils, based on the latest available CBEDS report or if a CBEDS report is unavailable, the registration list for the Charter School may be used.

...

"Low-income" shall be the percentage of pupils deemed to be eligible for free/reduced lunch as identified in the Free and Reduced Price Meals data on file at the CDE. ~~those charter schools in which a percentage of the pupils receive free or reduced meals according to the CDE.~~

...

"Medium Charter School" shall be defined as a school with an enrollment of ~~401~~ 176 pupils to 350 pupils, based on the latest available CBEDS report or if a CBEDS report is unavailable, the registration list for the Charter School may be used.

...

"Non-profit entity" means an entity that is organized and operated for purposes of not making a profit under the provisions of the federal Internal Revenue Code Section 501(c)(3), or is organized as/operated by a nonprofit public benefit corporation, pursuant to State Corporations Code, Title 1, Division 2, Part 2, Section 5110, et seq.

...

"Overcrowded School District" for purposes of determining preference points is any district that demonstrates eligibility in excess of two percent of their unhoused pupils.

....

"Preliminary Charter School Application" means a district filing on behalf of a charter school or the charter school submitting directly on Form SAB 50-09, including all supporting documents as identified in the General Instructions Section of that Form submitted to the OPSC and the OPSC has accepted the application for processing.

"Preliminary Charter School Apportionment" means an apportionment made pursuant to Education Code Section 17078.52(c)(3).

....

"Region One" shall consist of the following counties: Alpine, Amador, Butte, Colusa, Contra Costa, Del Norte, El Dorado, Glenn, Humboldt, Lake, Lassen, Marin, Mendocino, Modoc, Napa, Nevada, Placer, Plumas, Sacramento, San Joaquin, Shasta, Sierra, Siskiyou, Solano, Sonoma, Sutter, Tehama, Trinity, Yolo, and Yuba.

"Region Two" shall consist of the following counties: Alameda, Calaveras, Fresno, Inyo, Kern, Kings, Madera, Mariposa, Merced, Mono, Monterey, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Stanislaus, Tulare, and Tuolumne.

"Region Three" shall consist of the following counties: Los Angeles, San Bernardino, San Luis Obispo, Santa Barbara, ~~Tulare~~, and Ventura.

"Region Four" shall consist of the following counties: Imperial, Orange, Riverside, and San Diego.

...

"Rural Area" shall be a school with a locale code of six, seven or eight as classified by the National Center for Education Statistics (NCES).

...

"Small Charter School" shall be defined as a school with an enrollment of not more than ~~400~~ 175 pupils, based on the latest available CBEDS report or if a CBEDS report is unavailable, the registration list for the Charter School may be used.

...

"Suburban Area" shall be a school with a locale code of either two, three, four, or five as classified by the NCES.

...

"Urban Area" shall be as a school with a locale code of one as classified by the NCES.

...

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17009.5, 17017.6, 17017.7, 17021, 17047, 17050, 17051, 17070.15, 17070.51(a), 17070.71, 17070.77, 17071.10, 17071.25, 17071.30, 17071.33, 17071.35, 17071.40, 17071.76, 17072.10, 17072.12, 17072.18, 17072.33, 17073.25, 17074.10, 17075.10, 17075.15, 17077.40, 17077.42, 17077.45, 17078.52, 17078.56, 17280, and 56026, Education Code. Section 53311, Government Code and Section 1771.5, Labor Code.

Article 14. Charter School Facilities Program

Section 1859.160. General.

A Charter School seeking a Preliminary Charter School Apportionment pursuant to the provisions of Education Code Sections 17078.50 through 17078.64 for new construction shall complete and file a Form SAB 50-09.

After the Board has approved a Preliminary Charter School Apportionment for a Preliminary Charter School Application submitted pursuant to this section, a charter school seeking an advance release of funds for site acquisition pursuant to Section 1859.164.2 (a) or (b), shall be required to submit an additional Form SAB 50-09, to the OPSC, to determine eligible site acquisition costs. A Charter School seeking an advance release of funds for design, engineering, and other pre-construction project costs pursuant to Section 1859.164.2 (a), shall not be required to submit an additional Preliminary Charter School Application.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17078.52 and 17078.53, Education Code.

Section 1859.161. Preliminary Charter School Application Submittals.

A Charter School seeking a Preliminary Charter School Apportionment shall complete and submit Form SAB 50-09 between February 2003 and March 31, 2003, or during a period of 120 calendar days beginning 10 days after an election authorizing additional funding.

The Board may establish additional application filing periods as needed.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Section 17078.53, Education Code.

Section 1859.162. Preliminary Apportionment Eligibility Criteria.

A Charter School may apply for a Preliminary Charter School Apportionment by submittal of Form SAB 50-09 if all of the following conditions are met: the district in which the Charter School is physically located has SFP new construction eligibility pursuant to Education Code Section 17071.75 and Section 1859.50 at the grade level of project being proposed in the Charter School application.

- (a) the district in which the Charter School is physically located has SFP new construction eligibility pursuant to Education Code Section 17071.75 and Section 1859.50 at the grade level(s) being proposed in the Preliminary Charter School Application; and
- (b) prior to submission of the Preliminary Charter School Application the requirements of EC Section 17078.53(d) are met.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17071.75, 17078.52 and 17078.53, Education Code.

Section 1859.163. Approval of Applications for Preliminary Charter School Apportionments.

Prior to approving a Preliminary Charter School Apportionment, the Board will require a certification from the Authority that the Charter School is Financially Sound. ~~The calculation of the Preliminary Charter School Apportionment shall be determined using the criteria established in Section 1859.145 and 1859.145.1.~~ In providing a Preliminary Charter School Apportionment, the Board shall use the funding criteria established in Section 1859.164. The apportionment provided by the Board may be 100 percent of the total project cost dependent upon the method of Charter School's contribution as determined by the Authority.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17078.52 and 17078.53, Education Code.

Section 1859.163.1. Preliminary Charter School Apportionment Determination.

Note: Section will be modified further based on total project cost.

The Preliminary Charter School Apportionment shall be equal to the sum of the following:

- (a) The amounts shown below for each pupil included in a Preliminary Charter School Application:
 - (1) \$5,226.82 for each elementary school pupil.
 - (2) \$5,533.65 for each middle school pupil.
 - (3) \$7,225.94 for each high school pupil.
 - (4) \$16,653.06 for each pupil that is a Severely Disabled Individual with Exceptional Needs.

- (5) \$11,137.37 for each pupil that is a Non-Severely Disabled Individual with Exceptional Needs.
- (b) An amount equal to 12 percent of the amount determined in (a) for multilevel construction, if requested by the district.
- (c) An amount equal to one-half of the site acquisition value determined in Section 1859.163.2.
- (d) An amount for site development cost determined, at the option of the district, by one of the following:
 - (1) One-half of the Site Development Cost for the specific site as authorized by Section 1859.76.
 - (2) One-half of the Site Development Cost as authorized by Section 1859.76 using historical information in the Charter School General Location. Historical information that may be considered to determine this estimated cost may include prior SFP projects of the district or other districts in the Charter School General Location.
- (3) \$70,000 multiplied by the proposed acres requested on the Form SAB 50-09.
- (e) If the Preliminary Application request is for a small project that will house no more than 200 pupils, an amount pursuant to 1859.83(b)(1) or (b)(2), as appropriate.
- (f) An amount due to urban location, security requirements and impacted site equal to 15 percent of the amount determined in (a) for a site that is 60 percent of the CDE recommended site size plus 1.166 percent for each percentage decrease in the CDE recommended site size below 60 percent when the following criteria are met:
 - (1) The Charter School has requested an increase for multilevel construction pursuant to (b) above.
 - (2) The Useable Acres of the existing and/or proposed site are 60 percent or less of the CDE recommended site size for Charter Schools determined by multiplying the sum of the pupil grants requested on Form SAB 50-09, and the current CBEDS enrollment on the site (if applicable) by .01775 for elementary school pupils, .021 for middle school pupils and .02472 for high school pupils. For purposes of this calculation, assign Severely Disabled Individuals with Exceptional Needs and Non-Severely Disabled Individuals with Exceptional Needs pupil grants requested on Form SAB 50-09, as either elementary, middle or high school pupils based on the type of project selected by the district on Form SAB 50-09.
 - (3) The value of the property as determined in Section 1859.163.2(a) is at least \$750,000 per Useable Acre. This criterion does not apply to an application for an addition to an existing school site.
- (g) An amount for the geographic location of the proposed project equal to the sum of the amounts determined in (a), (b), (d)(3), (e) and (f) multiplied by the indicated percentage factor in the Geographic Percentage Chart shown in Section 1859.83(a).

The amounts shown in (a) shall be adjusted in a manner prescribed in Section 1859.71.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17075.10, 17078.10 and 17078.24, Education Code.

Section 1859.163.2. Preliminary Charter School Apportionment Site Acquisition Value.

If the Preliminary Charter School Application includes a request for site acquisition funding, the preliminary value of the proposed site shall be the sum of the following:

- (a) The value of the property determined by one of the following:
 - (1) By an appraisal or a preliminary appraisal of the property made no more than six months prior to the date the Preliminary Charter School Application was submitted to the OPSC, using the guidelines outlined in Section 1859.74.1. The preliminary appraisal may be made without access to the property.

- (2) The Median Cost of an acre of land in the Charter School General Location using historical information in the Charter School General Location multiplied by the number of proposed useable acres requested on Form SAB 50-09. Historical information that may be considered to determine land cost shall include prior real-estate sales consummated and documented by the county recorder or pending real-estate sales documented by a title insurance company's escrow instructions. For purposes of historical information include all real-estate sales consummated and documented by the county recorder for a minimum of six months and a maximum of up to two years prior to the date the Preliminary Charter School Application was submitted to the OPSC.
- (b) An amount for the estimated relocation cost and the estimated DTSC costs for review, approval and oversight of the POESA and the PEA as determined by one of the following:
 - (1) 21 percent of the value determined in (a).
 - (2) The sum of the following:
 - (A) The approved relocation expenses for the specific site to be acquired that conform to Title 25, California Code of Regulations, Section 6000, et. seq.
 - (B) The DTSC cost for review, approval, and oversight of the POSEA and the PEA for the specific site to be acquired.
- (3) The estimated relocation cost and the estimated DTSC costs for review, approval and oversight of the POESA and the PEA using historical information in the General Location. Historical information that may be considered to determine these estimated costs may include prior real-estate acquisitions of the district or other districts in the Charter School General Location.
- (c) Four percent of the amount determined in (a), but not less than \$50,000. This amount shall provide an allowance of any appraisal, escrow, survey, site testing, CDE review/approvals and preparation of the POESA and the PEA.
- (d) For allowable costs of hazardous material/waste removal and remediation costs, up to one-half times the value of the property determined in either (a)(1) or (a)(2), above.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17072.13, 17078.10 and 17078.24, Education Code.

Section 1859.164.1. Calculation of Preference Points.

Preference points will be calculated for all Preliminary Charter School Applications. An application shall receive preference points based on the total of (a), (b), and (c), up to a maximum of 100 points, as follows:

- (a) Low Income: Up to 40 points based on the percentage of pupils at the Charter School or school district where the Charter School is or will be located that receive/free reduced lunch, whichever is higher. if a percentage of pupils at the Charter School receive free/reduced lunch. If the proposed project is to construct a new campus for a Financially Sound Charter School using proposed pupils, the determination for free/reduced lunch will be the higher of the percentage of pupils at the existing Charter School or the percentage for the district where the Charter School is physically located. Use the following sliding scale to determine the number of preference points:

Percentage Receiving Free/Reduced Lunch	Preference Points Assigned
5-15%	4
16-30%	8
31-39%	12
40-47%	16
48-55%	20
56-64%	24
65-73%	28

74-82%	32
83-91 <u>92%</u>	36
92-100% <u>93</u>	40 <u>36.5</u>
<u>94</u>	<u>37</u>
<u>95</u>	<u>37.5</u>
<u>96</u>	<u>38</u>
<u>97</u>	<u>38.5</u>
<u>98</u>	<u>39</u>
<u>99</u>	<u>39.5</u>
<u>100</u>	<u>40</u>

- (b) Overcrowded School District: Up to 40 points if the school district where the Charter School is physically located is determined to be overcrowded by dividing the remaining New Construction Eligibility (prior to the reduction from this application) by the district's current enrollment (round up) and multiplying the product by 100. Use the following sliding scale to determine the number of preference points:

Percentage Overcrowded	Preference Points Assigned
2-5%	4
6-9%	8
10-13%	12
14-17%	16
18-21%	20
22-27%	24
28-34 %	28
35-41%	32
42-50%	36
51% and above	40

Percentage Overcrowded	Preference Points Assigned
<u>2-9%</u>	<u>4</u>
<u>10-13%</u>	<u>8</u>
<u>14-16%</u>	<u>12</u>
<u>17-19%</u>	<u>16</u>
<u>20-22%</u>	<u>20</u>
<u>23-25%</u>	<u>24</u>
<u>26-33 %</u>	<u>28</u>
<u>34-41%</u>	<u>32</u>
<u>42-49%</u>	<u>36</u>
<u>50% and above</u>	<u>40</u>

- (c) Non-Profit Entity: If the entity operating the Charter School meets the definition of a Non-Profit Entity, the project will receive 20 preference points.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Section 17078.56, Education Code.

Section 1859.164.2 Preliminary Charter School Apportionment Fund Release.

A Charter School may request an advance release of funds from a Preliminary Charter School Apportionment that was funded from the 2004 Charter School Facilities Account, for either of the following:

- (a) A separate advance release of funds for design equal to 20 percent of the amount determined in Section 1859.163.1(a), (b), (d), (e), (f), and (g).
- (b) A separate advance release of funds for site acquisition for an amount, not to exceed the Preliminary Charter School Apportionment, for site acquisition pursuant to Section 1859.81.1(a), (b) or (c) after submittal of a Form SAB 50-09 pursuant to Section 1859.160.

Qualified Charter Schools may request a separate advance release of funds for the design and for the site acquisition for the same project. A Charter School seeking an advance release of funds pursuant to (a) and/or (b) must have been deemed and maintained financial sound status from the Authority. The OPSC will release State funds included in a Preliminary Charter School Apportionment pursuant to (a) or (b) to the Charter School after submittal of the Form SAB 50-05. The OPSC shall not release funds in excess of the Preliminary Apportionment. State funds released from a Preliminary Charter School Apportionment pursuant to this Section shall be subject to the provisions in Section 1859.166. Once the Charter School Preliminary Apportionment is converted to a Final Charter School Apportionment pursuant to Section 1859.167, the Charter School may request a release of the remaining funds as prescribed in Section 1859.90.

Note: Authority cited: 17070.35 and 17078.64, Education Code

Reference: 17078.53, Education Code

Section 1859.167. Final Charter School Apportionment.

The amount of the Final Charter School Apportionment will be based on the provisions of any amended or new regulations that are effective at the time the Form SAB 50-04, for the Final Charter School Apportionment is submitted and accepted for processing by the OPSC. Prior to the Board providing a Final Charter School Apportionment, the Charter School will need to have a current Financial Soundness certification from the Authority. The Board shall convert the amounts determined below from the Preliminary Charter School Apportionment to the Final Charter School Apportionment:

- (a) If the Final Charter School Apportionment request is equal to or less than the Preliminary Charter School Apportionment, the Final Charter School Apportionment shall be funded entirely. The difference in the Final Charter School Apportionment and the Preliminary Charter School Apportionment shall be transferred to the Unrestricted Fund in the 2002 (or 2004, as appropriate) Charter School Facilities Account. The Final Charter School Apportionment shall become the full and final apportionment for the project.
- (b) If the Final Charter School Apportionment request is greater than the Preliminary Charter School Apportionment, the Board shall convert the Preliminary Charter School Apportionment to a Final Charter School Apportionment by either of the following:
 - (1) If the balance in the Unrestricted Fund in the 2002 (or 2004, as appropriate) Charter School Facilities Account is greater than the difference in the Final Charter School Apportionment and the Preliminary Charter School Apportionment, fund the Final Charter School Apportionment entirely. The Final Charter School Apportionment shall become the full and final apportionment for the project.

- (2) If the balance in the Unrestricted Fund in the 2002 (or 2004, as appropriate) Charter School Facilities Account is less than the difference in the Final Charter School Apportionment and the Preliminary Charter School Apportionment, fund the Final Charter School Apportionment using any remaining balance in the Unrestricted Fund in the 2002 (or 2004, as appropriate) Charter School Facilities Account. The Final Charter School Apportionment shall become the full and final apportionment for the project.

Any funds deposited into the Unrestricted Fund in the 2002 Charter School Facilities Account pursuant to ~~this Subsection (a), and not used under (b)(1), or (b)(2), or for Preliminary Charter School Applications received from February 2003 to April 1, 2003 presented to the Board but were not funded due to insufficient funds,~~ shall be used by the Board for other Charter School facility projects.

Any funds deposited into the Unrestricted Fund in the 2004 Charter School Facilities Account pursuant to Subsection (a), and not used under (b)(1) or (b)(2), shall be used by the Board for other Charter School facility projects.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Section 17078.52, Education Code.

Section 1859.168. Preliminary Charter School Apportionment Matching Share Requirement.

~~Once a Preliminary Charter School Apportionment is converted to a Final Charter School Apportionment,~~ The Charter School will be subject to the matching share requirements in Section 1859.77.1 and Education Code Section 17078.54(d) that may be paid through lease payments authorized by the Authority in lieu of the matching share. All lease payments shall be paid to the Board to be redeposited to the Charter School Facilities Unrestricted Account for purposes of this Article.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Section 17078.54, Education Code.

Section 1859.169. Eligible Expenditures.

Expenditures made with the Final Charter School Apportionment must comply with Education Code Section 17072.35 and 17078.54(a). Expenditures for construction are eligible only if the construction contract was entered into on or after September 27, 2002.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Sections 17078.52, Education Code.

Section 1859.170. Additional Program Reporting Requirements.

A Charter School filing a Form SAB 50-09 on its own behalf pursuant to this Article shall comply with the reporting requirements of Sections 1859.100, 1859.101, 1859.102, and 1859.106.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Section 17078.54, Education Code.

Section 1859.171. Use of Facility.

Once a Charter School is no longer occupying the facility constructed with funds derived through a Final Charter School Apportionment, the school district where the Charter School is physically located can either:

- (a) Elect to take possession of the facility and pay the balance of the local matching share. The District may qualify for a waiver of repayment if it can meet all the following:
 - (1) Demonstrate that at the time the Form SAB 50-04 was submitted for Final Charter School Apportionment, the district would have qualified for financial hardship, pursuant to Section 1859.81; and,
 - (2) Certify to the Board that it will comply with the requirements of Education Code Section 17078.62(b)(4)(B).
- (b) If the school district chooses not to take possession of the facility, it shall dispose of the facilities in the manner applicable to the disposal of surplus school sites pursuant to Education Code Sections 17455 through 17484. The proceeds from the sale shall be used to pay off the remaining loan balance, if any.

Note: Authority cited: Sections 17070.35 and 17078.64, Education Code.

Reference: Section 17078.62, Education Code.

State Allocation Board
Implementation Committee
January 8, 2004

ADJUSTMENT TO THE NEW CONSTRUCTION GRANT
FOR HAZARDOUS WASTE REMOVAL

BACKGROUND

Assembly Bill (AB) 1008 adds Section 17072.14 to the Education Code (EC), and allows for an adjustment to a new construction grant *“if, as a result of additional requirements imposed by the Department of Toxic Substances Control (DTSC), the actual amount paid by a school district for allowable costs of hazardous materials evaluation and removal...exceeds the amount of the (previous) grant apportionment for those purposes.”*

EC Section 17072.14 stipulates that the total adjusted apportionment for hazardous waste removal may not exceed the amount currently permitted in accordance with EC Section 17072.13 (the provision for the 150 percent cost cap for toxic site acquisition/clean-up).

DISCUSSION

EC Section 17072.14 allows that the adjustment of the new construction grant be based upon the difference in the initial apportionment for hazardous waste materials evaluation and removal and the *actual amount paid* for those purposes due to additional DTSC requirements. Consequently, its implementation would occur during the audit process.

Staff recognizes that “additional DTSC requirements” could be imposed as a result of various scenarios, including:

- New DTSC regulations or changes to existing DTSC regulations.
- The discovery of hazardous waste materials at a school site previously determined to be clean.
- An increase in the magnitude and associated costs of the hazardous waste cleanup originally projected for the school site.

It is staff’s intent to ensure that the State grant for allowable hazardous waste removal costs associated with all new construction - for new sites, existing sites, and leased sites - may be adjusted at the time the project is audited if additional DTSC requirements occurred during the course of the project, even if the district had not previously requested these costs on its School Facility Program (SFP) funding application.

The SFP regulations currently provide the basic mechanism by which to adjust the new construction grant for hazardous waste removal. Staff is proposing minor amendments to the SFP regulations for Section 1859.106, *Program Accountability Expenditure Audit* as shown on the Attachment.

ATTACHMENT A

ADJUSTMENT TO THE NEW CONSTRUCTION GRANT FOR HAZARDOUS WASTE REMOVAL State Allocation Board Implementation Committee Meeting, January 8, 2004

Section 1859.106. Program Accountability Expenditure Audit.

The projects will be audited to assure that the expenditures incurred by the district were made in accordance with the provisions of Education Code Section 17072.35 for new construction projects, Section 1859.120 for Joint-Use Projects, Section 1859.140 for Critically Overcrowded School projects, Section 1859.160 for Charter School projects, ~~and Education Code Section 17074.25 and Section 1859.79.2 for modernization projects, and Education Code~~ Section 17072.14 for projects with additional hazardous waste removal costs required by the DTSC. The audit will also assure that the district complied with all ~~site acquisition~~ guidelines as provided in Sections 1859.74, 1859.74.1, 1859.74.2, 1859.74.4, 1859.75 and 1859.75.1 ~~and all hazardous waste removal guidelines as provided in Sections 1859.74.2, 1859.74.3, 1859.74.4, 1859.75.1 and 1859.81.1.~~

An adjustment in the SFP grant will be made for the following:

- (a) The difference in the value of the site and the hazardous waste removal costs ~~originally that were~~ used to determine the New Construction Additional Grant for Hazardous Waste Removal and the actual amount paid by the district for the site, the relocation cost, the DTSC fees, and the allowable costs for hazardous waste ~~materials~~ removal.
- (b) For 50 percent of any insurance proceeds collectable by the district for displaced facilities and 50 percent of the net proceeds available from the disposition of displaced facilities pursuant to Section 1859.82(a) or (b).
- (c) The difference in the hazardous waste removal costs ~~originally that was~~ used to determine the New Construction Additional Grant for Hazardous Waste Removal on an Existing Site and the actual amount paid by the district for ~~the DTSC fees and~~ the allowable costs for hazardous waste ~~materials~~ removal.
- (d) The difference in the hazardous waste removal costs originally used to determine the New Construction Additional Grant for Hazardous Waste Removal for Leased Sites and the actual amount paid by the district for the DTSC fees and allowable costs for hazardous waste removal.
- (e) The amount paid by the district for the DTSC fees and allowable costs for hazardous waste removal, if no New Construction Additional Grant for Hazardous Waste Removal was originally requested.

When the OPSC receives the final expenditure report from the district on Form SAB 50-06, an audit of the expenditures by the OPSC shall commence within two years of the report. If the district is not notified by the OPSC within the two-year period that an audit will be made, there will be no audit of the project by the OPSC and the expenditures reported by the district shall be deemed appropriate. If the district has been notified that an audit of the expenditures will be made by the OPSC, the OPSC shall complete the audit within six months of the notification, unless additional information requested from the district has not been received.

Districts shall be required to maintain all appropriate records that support all district certifications and expenditures for all costs associated with SFP, Charter School, and Joint-Use projects for a period of not less than four years from the date the notice of completion is filed for the project in order to allow other agencies, including, without limitation, the Bureau of State Audits and the State Controller to perform their audit responsibilities.

The district is responsible to substantiate expenditures from the Joint-Use Partner(s) financial contribution pursuant to Section 1859.127 and from other local sources.

Should the OPSC conduct an audit of the district certifications or the expenditures for the project and make a finding that some or all of the expenditures were not made in accordance with the provisions of Education Code Section 17072.35 for new construction projects, Section 1859.120 for Joint-Use Projects, Section 1859.140 for Critically Overcrowded School projects, Section 1859.160 for Charter School projects, ~~and~~ Education Code Section 17074.25 and Section 1859.79.2 for modernization projects, and Education Code Section 17072.14 for projects with additional costs imposed by the DTSC, the OPSC shall recommend to the Board that the apportionment be adjusted based on the audit findings. Upon adoption of the audit findings by the Board, the district must submit a warrant for any amount identified as being owed within 60 days of the Board action. If this does not occur, the OPSC shall initiate collection procedures from the School Fund Apportionment as outlined in Education Code Section 17076.10(c).

Should the CDE make a finding that a project did not meet the standards that were adopted by the CDE pursuant to Education Code Section 17251 (b) and (c) when the district had self-certified that the project met those standards pursuant to Education Code Section 17070.50 (b), the Board may request that the CDE make a recommendation that the apportionment for the project be adjusted based on the CDE finding. Any adjustment in the apportionment shall be based on the percentage of space in the project that the CDE determined did not meet those standards. Upon adoption of the finding by the Board, the district must submit a warrant for any amount identified as being owed within 60 days of the Board action. If this does not occur, the OPSC shall initiate collection procedures from the School Fund Apportionment as outlined in Education Code Section 17076.10 (c).

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17070.35, 17070.50, 17072.14, 17072.18, 17072.35, 17074.25, 17076.10, 17077.40, 17078.52 and 17251, Education Code.

State Allocation Board Implementation Committee
January 8, 2004

CHANGES TO THE JOINT-USE PROGRAM (SB 15)

At the December 5, 2003 State Allocation Board (SAB) Implementation Committee meeting, changes to the School Facility Program (SFP) Joint-Use Program based on Senate Bill 15 were discussed. Listed below are the significant issues that were discussed at the meeting:

Alterations to Types

Staff explained that the previous Type I and Type II have been combined into a new Type I. A facility to provide for pupil academic achievement will no longer be acceptable under the new Type I under the new law. The new Type II allows for the construction of a new joint-use facility or the reconfiguration of existing school buildings to provide certain minimum essential facilities (MEF) under a grandfathering provision. In order to qualify under the grandfathering provisions, plans and specifications must be accepted by the Division of the State Architect by January 1, 2004.

Reconfigure Defined and Proposed Implementation

Staff presented various examples of reconfiguration scenarios, and defined the parameters in which it can occur. The OPSC staff met with its legal counsel and has determined that Joint-Use funds may be used for reconfiguration, as well as, any necessary replacement of displaced classrooms or other MEF. For purposes of SFP Joint Use Program, "reconfiguration" means remodeling an existing school building within its current confines and/or the expansion of the square footage of the existing building and any necessary replacement of displaced classrooms or other MEF. The replacement of classrooms or MEF must be part of the plans submitted in support of the Joint-Use Application, must occur concurrently and can not be part of a SFP application for new construction.

Joint-Use Partner Contribution

The Committee was advised that the state and local contribution to a joint-use project remains 50/50; however, the joint-use partner contribution has been reduced to a minimum of 25 percent. In addition, the District can opt to pay the full 50 percent local share of eligible costs if the District has passed a bond, which specifies that the monies are to be used specifically for the purposes of the joint-use project. It was clarified that matching share for financial hardship districts will not be provided by the State.

Application Submittals and Apportionments

A question came up as to how projects would be transitioned between current and new regulations. Since Joint-Use applications are funded on a yearly cycle, the regulations have been modified to clarify that all applications received in the funding cycle will be approved under the regulations in effect at the time of the SAB approval.

Attached is the final draft of the proposed regulations.

ATTACHMENT A

PROPOSED AMENDMENTS TO THE SFP JOINT-USE PROGRAM
 SB 15 AND OTHER REGULATORY AMENDMENTS
 State Allocation Board Implementation Committee Meeting, January 8, 2004

Section 1859.2. Definitions.

"Reconfigure" for the purposes of the joint use program means remodeling an existing school building within its current confines and/or the expansion of the square footage of the existing building and any necessary replacement of displaced classrooms or other minimum essential facilities.

~~"Type III Joint-Use Project" means a project that meets the criteria of Education Code Section 17077.40(b)(3).~~

Section 1859.73.1. New Construction Additional Grant for Project Assistance.

Excluding Joint-Use Projects, the Board shall provide, in addition to any other funding authorized by these Regulations, \$3,750 for Small School Districts for the cost necessary for project assistance.

For Type ~~III~~ II Joint-Use Projects, not part of a qualifying SFP Modernization project, the Board shall provide, in addition to any other funding authorized by these Regulations, \$3,750 for Small School Districts for the cost necessary for project assistance.

The amount(s) shown will be adjusted annually based on the change in the Class B Construction Cost Index as approved by the Board each January. The base Class B Construction Cost Index shall be 1.37 and the first adjustment shall be January 2001.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Section 17072.10, Education Code.

Section 1859.81. Financial Hardship.

Except for Joint-Use Projects, a A district is eligible for financial hardship to fund all or a portion of its matching share requirement after demonstrating both of the following:

- (a) The district is financially unable to provide all necessary matching funds for an eligible project. To determine this, an analysis shall be made of the district's financial records by the OPSC including data and records maintained by the CDE and the County Office of Education. The analysis shall consist of a review of the district's latest Independent Audit regarding funds available from all capital facility accounts, including, but not limited to, developer fees, funds generated from capital facility certificates of participation, federal grants, redevelopment funds, sale proceeds from surplus property, the appraised value of facilities approved for replacement pursuant to Section 1859.82, bond funds either encumbered, unencumbered or authorized but unsold, and savings from other SFP projects. All funds thus identified that have not been expended or encumbered by a contractual agreement for a specific capital outlay purpose prior to the initial request for financial hardship status shall be deemed available as a matching contribution.

After the initial request for financial hardship status is granted, no further encumbrances will be approved by the OPSC and all prospective revenue made available to the district's capital facility accounts shall be deemed available as matching contribution on the subsequent financial hardship review, with the exception of:

- (1) Approved interim housing expenditures.
- (2) Funding to pay for previously recognized multi-year encumbrances approved at the initial financial hardship approval.

- (3) Funding that is transferred into a Special Reserve Fund and is used for the express purpose of the Federal Renovation Program when the amount expended out of that fund does not exceed the maximum Federal Renovation Grant amount.
- (4) All other capital facility funding for a period of three years when no subsequent financial hardship request is made during this period. The three-year period begins with the date of the most recent financial hardship new construction or modernization adjusted grant funding apportionment.

The financial hardship analysis is subject to approval by the Board.

- (b) From the funds deemed available as a matching contribution, the district may retain \$19,776 per classroom in each enrollment reporting period for the cost to provide interim housing for the currently unhoused pupils of the district. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of classrooms needed for interim housing for the currently unhoused pupils shall be the sum of the positive numbers determined in (b)(7) as follows:
 - (1) Determine the current enrollment of the district by grade level as shown on the latest Form SAB 50-01.
 - (2) Determine the New Construction Grants apportioned by grade level for all SFP projects and LPP funded under the provisions of Sections 1859.12 or 1859.13 where the district has submitted Form SAB 50-06 indicating that the project is 100 percent complete.
 - (1) Subtract (b)(2) from (b)(1).
 - (2) Determine the number of classrooms by grade level reported in Part 1, Line 8 on Form SAB 50-02.
 - (3) Multiply the classrooms determined in (b)(4) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe.
 - (4) Subtract the product determined in (b)(5) from the difference determined in (b)(3) by grade level.
 - (5) Divide the difference by grade level determined in (b)(6) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.

From the funds deemed available as a matching contribution, the district may also retain \$19,776 per portable toilet unit in each reporting period for the cost to provide necessary interim toilet facilities for the currently unhoused pupils of the district. The amount shown shall be adjusted annually in the manner prescribed in Section 1859.71. The number of toilet facilities needed for interim housing shall be the sum of the positive numbers determined in (b)(7) divided by eight rounded up to the nearest whole number.

If the district's available funds, as determined by the OPSC analysis less costs for interim housing, is less than its matching share, the district will be deemed to have met the requirements of this Subsection.

- (c) The district has made all reasonable efforts to fund its matching share of the project by demonstrating it is levying the developer fee justified under law or an alternative revenue source equal to or greater than the developer fee otherwise justified under law at the time of request for hardship and the district meets at least one of the following:
 - (1) The current outstanding bonded indebtedness of the district, at the time of request for financial hardship status, is at least 60 percent of the district's total bonding capacity. Outstanding bonded indebtedness includes that part of general obligation bonds, Mello-Roos Bonds, School Facility Improvement District Bonds and certificates of participation which the district is paying a debt service that was issued for capital outlay school facility purposes.
 - (2) The district had a successful registered voter bond election for at least the maximum amount allowed under Proposition 39 within the previous two years from the date of request for financial hardship status. The proceeds from the bond election that represent the maximum amount allowed under the provisions of Proposition 39 must be used to fund the district's matching share requirement for SFP project(s).
 - (3) It is a County Superintendent of Schools.
 - (4) The district's total bonding capacity at the time of the request for financial hardship status is \$5 million or less.
 - (5) Other evidence of reasonable effort as approved by the SAB.

If the district's request for financial hardship status is denied by the Board, the district may be deemed eligible for rental payments of \$2,000 per year per classroom under the Emergency School Classroom Law of 1979 for a two year period when relocatable classroom buildings are available and the district provides financial documentation that it is unable to afford the full rental amount and any other information satisfactory to the Board that the rental reduction is necessary. The number of classrooms eligible for the \$2,000 rental payments shall be the sum of the numbers determined in (c)(5)(B) as follows:

- (A) Determine the number of pupils by grade level that the district requested a New Construction Grant on the Form SAB 50-04 that were denied financial hardship status.
- (B) Divide the number by grade level determined in (c)(5)(A) by 25 for K-6, 27 for 7-12, 13 for Non-Severe and 9 for Severe and round up to the nearest whole number.

If the district meets the financial hardship requirements in this Section, the amount of financial hardship is equal to the district's matching share less funds deemed available in (a).

Once a district has been notified by the OPSC that it meets the requirements of financial hardship in this Section, the district may file Form SAB 50-04 under the provisions of financial hardship anytime within a period of 180 calendar days from the date of the OPSC notification.

If the district does not submit Form SAB 50-04 under the provisions of financial hardship within 180 calendar days of the OPSC notification of approval of financial hardship status, the district must re-qualify for financial hardship status under the provisions of this Section by submittal of a new request for financial hardship status.

If the district submits Form SAB 50-04 within 180 calendar days of the OPSC notification of approval of financial hardship and the project(s) has been included on an unfunded list for more than 180 calendar days, a review of the district's funds pursuant to (a) will be made to determine if additional district funds are available to fund the district's matching share of the project(s).

Financial hardship approval status by the OPSC for a separate design and/or site apportionment does not apply to any subsequent funding for the project(s).

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17075.10 and 17075.15, Education Code.

Section 1859.83. Excessive Cost Hardship Grant.

In addition to any other funding authorized by these Regulations, a district is eligible for funding as a result of unusual circumstances that created excessive project costs beyond the control of the district. The Excessive Cost Hardship Grant shall be based on any of the following:

- (a) Excessive Cost due to Geographic Location.

A district with a project that is located in a geographic area designated in the Geographic Percentage Chart below is eligible for the sum of the Excessive Cost Hardship Grant(s) determined by multiplying the indicated percentage factor shown in the Geographic Percentage Chart below by each of the following amounts:

- (1) The New Construction Grant and the Modernization Grant.
- (2) The funding provided by Sections 1859.71.2, 1859.71.3, 1859.72, 1859.73, 1859.73.2, 1859.78.4, 1859.78.5, 1859.82(a) and (b), 1859.83(b), (c), (d) and (f) and 1859.125(a).

GEOGRAPHIC PERCENTAGE CHART

COUNTY	% FACTOR	DESCRIPTION
Alpine	5	The entire county.
Amador, Eastern Part	5	All of Amador County except the portion lying west of a line drawn five miles east of, and paralleling State Highway 49.
Butte, Eastern Part	5	All of Butte County except that portion lying west of a line drawn ten miles east of, and paralleling State Highway 99.
Calaveras, Eastern Part	5	All of Calaveras County except that portion lying west of State Highway 49.
Del Norte	5	The entire county.
El Dorado, Eastern Part	15	That portion lying east of a north-south line drawn 25 miles west of the Nevada State Line and north to the county line and south to State Highway 88.
El Dorado	5	El Dorado County except the eastern part and the following areas: <ul style="list-style-type: none"> • West of a line drawn six miles east of and paralleling State Highway 49. • Within five miles of either side of U.S. highway 50 from the western county line to a point on the eastern limit of the community of Pollock Pines. • West of a line drawn three miles easterly from and paralleling a certain county road described as the Pleasant Valley Road which connects the community of Aukum with Diamond Springs and with the city of Plymouth.
Fresno, Eastern Part	5	All of Fresno County lying east of a line drawn ten miles east of, and paralleling the west boundary of the Sierra National Forest.
Glenn, Western Part	5	All of Glenn County except that portion lying east of a line drawn ten miles west of, and paralleling Interstate Highway 5.
Humboldt, Redwood Highway	5	That portion of Humboldt County situated within five miles of the Redwood Highway (U.S. 101) except for that portion situated within ten miles of the Redwood Highway from the northern boundary of the community of Trinidad to the southern boundary of the community of Rio Dell.
Humboldt, State Highway 299 and Vicinity	5	That portion of Humboldt County situated within five miles of State Highway 299 and State route 96, except for those portions situated within ten miles of the Redwood Highway (U.S. 101) from the northern boundary of the community of Trinidad to the southern boundary of the community of Rio Dell.
Humboldt, Southeastern Part	15	That portion of Humboldt county adjacent to or east of, the road between Harris to Blocksburg to a point ten miles north of Blocksburg.
Humboldt, Residual Area	10	All areas of Humboldt County not classified in other cost groups except for that portion situated within ten miles of the Redwood Highway from the northern boundary of the community of Trinidad to the southern boundary of the community of Rio Dell.
Imperial	5	The entire county.
Inyo, Southeastern Part	20	That portion of Inyo County situated east of the western boundary of the Death Valley National Monument from the northern boundary of said national monument to the southern boundary of the county.
Inyo, Residual Area	5	All of Inyo County except the southeastern part described above.
Kern, Eastern Part	5	That portion of Kern County lying east of a north-south line drawn through the eastern boundary of the town of Tehachapi.

COUNTY	% FACTOR	DESCRIPTION
Lake	5	The entire county.
Lassen, Southern Part	10	That portion of Lassen County lying south of an east-west line drawn through a point ten miles north of Susanville.
Lassen, Northern Part	15	All of Lassen County except the southern part described above.
Los Angeles, Santa Catalina Island only	*	The entire Santa Catalina Island.
Madera, Central Part	5	That portion of Madera County lying between a line drawn ten miles west of, and paralleling the western boundary of the Sierra National Forest and a line drawn ten miles east of and paralleling the western boundary of the Sierra National Forest.
Madera, Eastern Part	5	All of Madera County except the western part and the central part described above.
Mariposa, Eastern Part	5	All of Mariposa County except that portion lying west of: <ul style="list-style-type: none"> • A line drawn five miles east of, and paralleling State Highway 49 from the northern county line to Mormon's Bar; and • A line drawn ten miles west of, and paralleling the western boundary of the Sierra National Forest from a point due east of Mormon's Bar to the southern county line.
Mendocino, Fort Bragg Area	10	Those portions of Mendocino County lying west of the Southern Redwood Highway Area, and south of the Ten Mile River.
Mendocino, Northern Redwood Highway Area	5	That portion of Mendocino County situated within five airline miles of the Redwood Highway (U.S. 101) from a point ten miles north of the Willits City Hall to the northern boundary of the county.
Mendocino, Residual Area	10	Those portions of Mendocino County not otherwise classified except that portion situated within ten airline miles of the Redwood Highway (U.S. 101) from a point ten miles north of the Willits City Hall to the southern boundary of the county. (Comprises the Northeastern part of the county and the coastal strip in the northwestern part).
Modoc	15	The entire county.
Mono	20	The entire county.
Monterey, Southern Part	5	All Monterey County except that portion lying north of an east-west line beginning on the coast two miles south of the City of Carmel and extending due east to the eastern boundary of the county.
Nevada	5	That portion of Nevada County not included in the Eastern Part.
Nevada, Eastern Part	15	That portion lying east of a north-south line drawn 25 miles west of the Nevada State Line and north to the county line and south to the county line.
Placer, Eastern Part	15	That portion lying east of a north-south line drawn 25 miles west of the Nevada State Line and north to the county line and south to the county line.
Placer, Northeastern Part	5	All of Placer County except the Eastern Part and the following: <ul style="list-style-type: none"> • Within five miles of either side of State Highway 65 from the southern boundary of the county and the northern limit of the community of Lincoln. • Five miles either side of Interstate 80 from the southern boundary of the county and the northern limit of the community of Penryn. • West of a line drawn five miles east of, and paralleling State Highway 49. • Within five miles of either side of Interstate 80 between the northern limit of the community of Penryn and the northern limit of the community of Colfax.

COUNTY	% FACTOR	DESCRIPTION
Plumas	5	The entire county.
Riverside, Eastern Part	20	That portion lying east of a north-south line drawn 50 miles west of the Arizona State Line and north to the county line and south to the county line.
Riverside, Central Part	5	That portion of Riverside County lying east of a north-south line drawn through the intersection of Interstate 10 and Fields Road extending from the southern county line of Riverside County, north to the southern county line of San Bernardino County to the Eastern Part of the County.
San Benito, Southern Part	5	All of San Benito County except that portion lying north of an east-west line drawn across the county from a point two miles south of the community of Paicines.
San Bernardino, Northeastern Part	5	That portion of San Bernardino County lying north and east of an east-west line drawn two miles north of Oro Grande, extending from the western boundary of the county to its intersection with the northerly extension of, and thence along a line drawn through the following points: A point five miles east of Victorville, the eastern edge of the communities of Running Springs and Camp Angelus then due south to the San Bernardino County line.
San Bernardino, Eastern Part	20	That portion lying east of a north-south line drawn 150 miles west of the Arizona State Line and north to the county line and south to the county line.
San Diego, Northeastern Part	10	That portion of San Diego County lying east of a north-south line drawn ten miles east of the community of Julian, said line extending from the northern boundary of the county to its intersection with an east-west line extending from the eastern boundary of the county to its intersection with the aforesaid north-south line, said east-west line being at its closest point, three miles due north of the community of Mount Laguna.
San Mateo, Southwestern Part	5	That portion of San Mateo County lying more than two miles westerly from the nearest point on Skyline Boulevard and south of an east-west line drawn through a point two miles north of the community of Montara.
Santa Cruz, Northwestern Part	5	That portion of the Santa Cruz County lying northerly and westerly from a line drawn from a point one mile north of Swanton on the coast through a point one mile north of Brookdale and situated more than two miles from the nearest point on the eastern boundary of the county.
Shasta, except Valley Area	5	All of Shasta County except that portion lying south of Shasta Lake and situated within ten miles of Interstate Highway 5.
Sierra	5	The entire county.
Siskiyou, Central Part	15	That portion of Siskiyou County situated within ten miles of U.S. Highway 97 from Grass Lake to the Oregon State Line.
Siskiyou, Salmon River	25	All of the drainage area of the Salmon River (including the North and South Forks) except that portion situated within the Somes Bar Area described below.
Siskiyou, Somes Bar Area	20	Those portions of the drainage areas of the Salmon and Klamath Rivers located within the boundaries of the Junction Elementary School District.
Siskiyou, Western Part	15	That portion of Siskiyou County lying westerly from a line drawn ten miles west of and parallel to Interstate 5, except the Somes Bar and Salmon River areas described above.
Siskiyou, Yreka and Residual Area	5	All of Siskiyou County except the Salmon River, Somes Bar and Western areas described above.
Sonoma, Northwestern	5	That portion of Sonoma County enclosed by a line following the northern boundary of the county from the Pacific Ocean to a point 15 miles inland, thence southerly to

COUNTY	% FACTOR	DESCRIPTION
Part		a point two miles west of the community of Los Lomas, thence southerly to a point on the coast two miles south of the community of Fort Ross, thence northerly along the coast line to the northern boundary of the county.
Tehama, Residual Area	5	All of Tehama County except those portions situated within ten miles west of Interstate Highway 5 from the north county line to the southern county line; within ten miles east of Interstate Highway 5 from the north county line southward to a point east of Red Bluff, thence within ten miles east of and paralleling State Highway 99 southward to the county line.
Trinity, Residual Area	15	All of Trinity County except the State Highway 299 area described below.
Trinity, State Highway 299	10	That portion of Trinity County situated within five miles of State Highway 299.
Tulare, Eastern Part	5	That portion of Tulare County lying east of a north-south line drawn through the western limits of the community of Silver City.
Tuolumne, Eastern Part	5	All of Tuolumne County except that portion lying west of State Highway 49.
Yuba, Northeastern Part	5	All of Yuba County except that portion lying west of a line drawn ten miles east of, and paralleling State Highway 65 and that portion lying south of a line drawn three miles north of, and paralleling State Highway 20.

*As specifically approved by the Board.

- (b) Excessive Cost for Projects that House No More than 200 Pupils (Small Size Projects).
- (1) Excluding Joint-Use Projects, if the project will house less than 101 pupils, the district is eligible for an Excessive Cost Hardship Grant equal to 12 percent of the funding provided by the New Construction Grant or 12 percent of the funding provided by the Modernization Grant.
 - (2) Excluding Joint-Use Projects, if the project will house between 101 and 200 pupils, the district is eligible for an Excessive Cost Hardship Grant equal to four percent of the funding provided by the New Construction Grant or four percent of the funding provided by the Modernization Grant.
 - (3) A Type I Joint-Use Project and a Type II, part of a qualifying SFP Modernization project, Joint-Use Project is eligible for an Excessive Cost Hardship Grant equal to:
 - (A) 12 percent of the funding provided by Section 1859.125(a) if the Qualifying SFP New Construction or Modernization Project pursuant to Section 1859.123 or 1859.123.1 will house less than 101 pupils.
 - (B) Four percent of the funding provided by Section 1859.125(a) if the Qualifying SFP New Construction or Modernization Project pursuant to Section 1859.123 or 1859.123.1 will house between 101 and 200 pupils.
 - (4) A Type III Joint-Use Project, not part of a qualifying SFP Modernization project, is eligible for an Excessive Cost Hardship Grant equal to eight percent of the funding provided by Section 1859.125(a).
 - (c) Excessive Cost to Construct a New School Project.
If the project is for a new elementary, middle or high school on a site with no existing school facilities the district is eligible for a New Construction Excessive Cost Hardship Grant equal to the difference in the amount provided by the New Construction Grant and the amount shown below, based on the number of classrooms, including classrooms used for Individuals with Exceptional Needs, in the project:

Class-rooms in project	Elementary School	Middle School	High School
1	\$160,000	\$674,000	\$1,466,000
2	\$377,000	\$756,000	\$1,525,000
3	\$566,000	\$840,000	\$1,885,000
4	\$717,000	\$932,000	\$2,205,000
5	\$842,000	\$1,028,000	\$2,428,000
6	\$1,021,000	\$1,125,000	\$2,651,000
7	\$1,202,000	\$1,222,000	\$2,874,000
8	\$1,341,000	\$1,328,000	\$3,046,000
9	\$1,341,000	\$1,440,000	\$3,184,000
10	\$1,577,000	\$1,553,000	\$3,321,000
11	\$1,577,000	\$1,666,000	\$3,459,000
12	\$1,660,000		\$3,585,000
13			\$3,709,000
14			\$3,833,000
15			\$3,958,000
16			\$4,082,000
17			\$4,207,000
18			\$4,331,000
19			\$4,455,000
20			\$4,580,000
21			\$4,704,000
22			\$4,828,000

The amounts shown above will be adjusted annually in the manner prescribed in Section 1859.71.

Any Excessive Cost Hardship Grant provided under this subsection for a new school project shall be offset against future New Construction Grant funds provided for that same school. The amount of the offset shall be determined by dividing the additional New Construction Grant pupil request by the difference in the New Construction Grant pupil request when the initial Excessive Cost Hardship Grant was made and 325 for an elementary school, 324 for a middle school, and 621 for a high school project and multiplying the quotient by the Excessive Cost Hardship Grant funds provided under this subsection for that project.

(d) Excessive Cost Due to Urban Location, Security Requirements and Impacted Site.

(1) Excluding Joint-Use Projects, the district is eligible for an Excessive Cost Hardship Grant if the district had a project that was previously approved by the DSA, and prior to January 22, 2003, has received SAB approval for a time extension for substantial progress and if the useable site acreage for the project is:

(A) at least 50 percent but less than 75 percent of the site size recommended by the CDE for the master planned project capacity. The New Construction Excessive Cost Hardship Grant is equal to eight percent of the New Construction Grant and eight percent of the funding authorized by Sections 1859.73.2 and 1859.83(b) and (c).

(B) at least 30 percent but less than 50 percent of the site size recommended by the CDE for the master planned project capacity. The New Construction Excessive Cost Hardship Grant is equal to 15 percent of the New Construction Grant and 15 percent of the funding authorized by Sections 1859.73.2 and 1859.83(b) and (c).

(C) less than 30 percent of the site size recommended by the CDE for the master planned project capacity. The New Construction Excessive Cost Hardship Grant is equal to 50 percent of the New Construction Grant and 50 percent of the funding authorized by Sections 1859.73.2 and 1859.83(b) and (c).

(D) less than 30 percent of the site size recommended by the CDE for the master planned project capacity.

- (2) Excluding Joint-Use Projects, the district is eligible for an Excessive Cost Hardship Grant if all of the following conditions are met, as applicable:
 - (A) the Useable Acres of the site for the project are 60 percent or less of the CDE recommended site size based on:
 1. the current CBEDS Report at the existing site, if any, at the time of the CDE final plan approval for the project, if any, plus the greater of the Net School Building Capacity of the final new construction project plans submitted to the DSA as calculated in Education Code Section 17071.25(a)(2) or the pupil grants requested in the COS or Charter School project. The Useable Acres will include the existing site that is being utilized for this project plus any additional acreage to be acquired as a part of the Application.
 2. the current CBEDS Report at the site at the time of the CDE final plan approval for the modernization project.
 - (B) at least 60 percent of the classrooms in the construction plans are in multistory facilities for any type of new construction project.
 - (C) the value of the site being acquired for a new construction project on a new site is at least \$750,000 per Useable Acre.
- (3) If the criteria in (d)(2) are met, the Excessive Cost Hardship Grant:
 - (A) for new construction is equal to 15 percent of the New Construction Grant and 15 percent of the funding authorized by Sections 1859.73.2 and 1859.83(b) and (c) for a project with a site that is 60 percent of the CDE recommended site size plus 1.166 percent for each percentage decrease in the CDE recommended site size below 60 percent. In no event shall the amount provided in this subsection for a new construction project on a new site exceed 50 percent of the cost avoided with the purchase of a site smaller than the CDE recommended site size for the number of the pupil grants requested in the Application determined as follows:
 1. The current estimated value of the project site as determined in Section 1859.74.6(a)(1).
 2. Divide the amount in (A)1. by the number of Useable Acres.
 3. Multiply the quotient in (A)2. by the number of Useable Acres recommended by CDE for the number of pupils described in Section 1859.83(d)(2)(A)1.
 4. Subtract the value in (A)1. from the product in (A)3.
 5. Multiply the difference in (A)4. above by 50 percent.
 - (B) for modernization is equal to 15 percent of the Modernization Grant and 15 percent of the funding authorized by Section 1859.83(b) for a project with a site that is 60 percent of the CDE recommended site size plus 0.333 percent for each percentage decrease of the CDE recommended site size below 60 percent.
- (4) For Joint-Use Projects, the district is eligible for an Excessive Cost Hardship Grant if:
 - (A) the Type I ~~or II~~ Joint-Use Project's ~~Qualifying SFP New Construction P~~project pursuant to Section 1859.123 qualifies for an Excessive Cost Hardship Grant under Section 1859.83(d)(2) and (3)(A).
 - (B) The Type II Joint-Use Project's qualifying SFP Modernization project pursuant to Section 1859.123.1 qualifies for an Excessive Cost Hardship Grant under Section 1859.83(d)(2) and (3)(B).
- ~~(B)~~ (C) The Useable Acres at the existing school site where the Type ~~III~~ II Joint-Use Project, ~~not part of a qualifying SFP Modernization project,~~ is to be constructed are 60 percent or less of the CDE recommended site size based on the existing enrollment at the site.
- (5) If the criteria in (d)(4)(A) or (C) are met, the Joint-Use Project Excessive Cost Hardship Grant is equal to 15 percent of the funding provided by Section 1859.125(a) for a project with a site that is 60 percent of the CDE recommended site size plus 1.166 percent for each percentage decrease in the CDE recommended site size below 60 percent. For a Type I ~~or II~~ Joint-Use Project when the ~~Qualifying SFP New Construction P~~project involves new construction on a new site, in no event shall the amount provided in this subsection exceed 50 percent of the cost avoided with the purchase of a site smaller than the CDE recommended site size for the ~~Qualifying SFP New Construction P~~project pursuant to Section 1859.123 as calculated in Section 1859.83(d)(3)(A).
- (6) If the criteria in (d)(4)(B) are met, the Joint-Use Project Excessive Cost Hardship Grant is equal to 15 percent of the funding provided by Section 1859.125(a) for a project with a site that is 60 percent of the CDE recommended site size plus 0.333 percent for each percentage decrease in the CDE recommended site size below 60 percent.

- (e) Excessive Cost for rehabilitation of facilities the Board has determined are a health and safety risk to the pupils pursuant to Section 1859.82 (a) (1) and the cost/benefit analysis to mitigate the problem and remain in the facility is less than 50 percent of the Current Replacement Cost of the facility. If the district qualifies, the district is eligible for funding of rehabilitation costs as a modernization project. If the Approved Application is received on or before April 29, 2002, the grant amount provided is 80 percent of the amount of the cost estimate required in Section 1859.82 (a) (1) that has been reviewed by the OPSC and approved by the Board. If the Approved Application is received after April 29, 2002, the grant amount provided is 60 percent of the amount of the cost estimate required in Section 1859.82(a) (1) that has been reviewed by the OPSC and approved by the Board. The district may be eligible for the funding provided to initiate and enforce a LCP as prescribed in Section 1859.78.1.
- (f) Excessive cost due to handicapped access and fire code requirements:
 - (1) The district is eligible for a Modernization Excessive Cost Hardship Grant equal to three percent of the Modernization Grant for handicapped access and fire code requirements.
 - (2) The district is eligible for a Modernization Excessive Cost Hardship Grant of:
 - (A) \$80,000 for each new two-stop elevator required to be included in the project by the DSA if the Approved Application was received on or before April 29, 2002.
 - (B) \$60,000 for each new two-stop elevator required to be included in the project by the DSA if the Approved Application is received after April 29, 2002.
 The amounts shown in (A) and (B) above shall be adjusted annually in the manner prescribed in Section 1859.78.
 - (3) The district is eligible for a Modernization Excessive Cost Hardship Grant of:
 - (A) \$14,400 for each additional stop of the new elevator required in (2) above if the Approved Application was received on or before April 29, 2002.
 - (B) \$10,800 for each additional stop of the new elevator required in (2) above if the Approved Application was received after April 29, 2002.
 The amounts shown in (A) and (B) above shall be adjusted annually in the manner prescribed in Section 1859.78.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17074.15, 17074.16, 17075.10, 17075.15, 17077.40, 17077.42 and 17077.45, Education Code.

Article 10. Fund Release and Priority Points

Section 1859.90. Fund Release Process.

With the exception of an apportionment made pursuant to Sections 1859.81.1(c) or 1859.81.2, the OPSC will release State funds that have been apportioned by the Board to the district after submittal, by the district, of the Form SAB 50-05. With the exception of an apportionment made for a Type III Joint-Use Project, not part of a qualifying SFP Modernization project, pursuant to Article 12 of these Regulations, a district must submit the Form SAB 50-05, within 18 months of the Apportionment of the SFP grant for the project or the entire New Construction Adjusted Grant, Modernization Adjusted Grant or Type I or II, part of a qualifying SFP Modernization project. Joint-Use Project apportionment shall be rescinded without further Board action, and the pupils housed in the project, if applicable, will be added back to the district's baseline eligibility. The district may refile a new application for the project subject to district eligibility and priority funding at the time of resubmittal.

If the apportionment was made for a Type III Joint-Use Project, not part of a qualifying SFP Modernization project, pursuant to Article 12 of these Regulations, the district must submit Form SAB 50-05 within 18 months of the date the plans and specifications for the Joint-Use Project that have been approved by the DSA and the CDE are submitted to the OPSC or the apportionment shall be rescinded without further Board action.

The OPSC will release State funds that have been apportioned by the Board pursuant to Section 1859.81.1(c) to the district within 30 calendar days of the apportionment.

Note: Authority cited: Section 17070.35, Education Code.

Reference: Sections 17072.12, 17072.30, 17074.15, 17076.10, 17077.40, 17077.42 and 17077.45, Education Code.

Article 12. Joint-Use Project Grant Determination

Section 1859.120. General (Joint-Use Project Funding).

A district seeking Joint-Use Project funding pursuant to the provisions of Education Code Section 17077.40, shall complete and file Form SAB 50-07.

If the Joint-Use Project will serve more than one grade configuration or the Joint-Use Project will serve multiple public school sites, the Joint-Use Project eligibility and funding will be determined based on the highest grade level served by the facility.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Section 17077.40, Education Code.

Section 1859.121. Joint-Use Project Application Submittals and Apportionments.

The Board shall accept Approved Applications for Joint-Use Funding on a yearly basis as follows:

- (a) For any funding made available for this purpose by May 31, 2003, applications will be accepted from November 5, 2002 through May 31, 2003. The Board will apportion the funding made available by May 31, 2003 at the July 2003 Board meeting.
- (b) For any additional funding that is made available for this purpose beginning June 1, 2003 and thereafter, the Board will accept applications from June 1 of the prior calendar year through May 31 of the current calendar year for any funding made available for this purpose by May 31 of each year. The Board will apportion the funding made available by May 31 of each year at the following July Board meeting based on the SFP regulations in effect at that time.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

Section 1859.122. Type I Joint-Use Program Eligibility Criteria.

A district requesting funding for a Type I Joint-Use Project may submit Form SAB 50-07 to the OPSC if all the following criteria are met:

- (a) The plans and specifications for the Type I Joint-Use Project are included in the plans and specifications for a new school or an addition to an existing public school for which the district has requested SFP new construction funding.
- (b) The Type I Joint-Use Project will be located on the same site where the SFP new construction project is located.
- (c) The Type I Joint-Use Project will ~~provide facilities to be used~~ increase the square footage and/or Extra Cost for any of the following: any of the following proposed facilities included in the SFP new construction project:

- (1) ~~To improve pupil Academic Achievement.~~ A multipurpose room.
- (2) ~~To provide Teacher Education.~~ A gymnasium.
- (3) A Childcare facility.

- (4) A library.
- (5) A Teacher Education facility.
- (d) At least one of the Joint-Use Partner(s) is an institution of Higher Education, a governmental agency, or a non-profit organization. Other Joint-Use Partner(s) may be a county office of education or another district provided the funds contributed by those agencies pursuant to Section 1859.127 are not otherwise available for other SFP projects.
- (e) The district has entered into a Joint-Use Agreement that meets the criteria in Education Code Section 17077.42.
- (f) The district has joint-use square footage eligibility pursuant to Section 1859.124(a)-or has demonstrated that it will incur Extra Cost pursuant to Section 1859.125.1.
- (g) The construction contract for the Type I Joint-Use Project was not executed prior to April 29, 2002.
- (h) The plans and specifications for the Type I Joint-Use Project have been approved by the DSA.
- (i) The plans for the Type I Joint-Use project have been approved by the CDE.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

Section 1859.122.1. Type II Joint-Use Program Eligibility Criteria.

A district requesting funding for a Type II Joint-Use Project may submit ~~an~~ Form 50-07 to the OPSC if ~~all~~ the following criteria are met:

- (a) If the Joint-Use Project proposes to Reconfigure an existing school building, then the plans and specifications for the Type II Joint-Use Project are ~~may be~~ included in the plans and specifications for a new school or an addition/modernization to an existing public school for which the district has requested SFP new construction modernization funding. If the Joint-Use Project will be part of a qualifying SFP Modernization project, then the Type II Joint-Use Project will be located on the same site where the SFP modernization project is located and the site does not have the type of facility for which the Joint-Use Funding is requested or the facility is Inadequate.
- (b) The Type II Joint-Use Project will be located on the same site where the SFP new construction project is located. If the Joint-Use Project proposes to construct new school buildings, then the project will be located on an existing school site that does not have the type of facility for which the Joint-Use Funding is requested or the facility is Inadequate.
- (c) The Type II Joint-Use Project will increase the square footage and/or Extra Cost of any of the following proposed facilities included in the SFP new construction project: The Type II Joint-Use Project will either Reconfigure an existing school building or construct new school buildings, and will provide facilities to be used for any of the following:
 - (1) A multipurpose room.
 - (2) A gymnasium.
 - (3) A childcare facility.
 - (4) A library.
 - (5) A Teacher Education facility.
- (d) At least one of the Joint-Use Partner(s) is a governmental agency, an institution of Higher Education or a Non-Profit Organization. The Joint-Use Partner(s) may be a county office of education or another district provided the funds contributed by those agencies pursuant to Section 1859.127 are not otherwise available for other SFP projects.
- (e) The district has entered into a Joint-Use Agreement that meets the criteria in Education Code Section 17077.42.
- (f) The district has demonstrated it has joint-use square footage eligibility pursuant to Section 1859.124(b) ~~or that it will incur Extra Cost pursuant to Section 1859.125.1.~~
- (g) The construction contract for the Type II Joint-Use Project was not executed prior to April 29, 2002.

- (h) The plans and specifications for the Type II Joint-Use Project, to reconfigure existing school buildings as part of a qualifying SFP project, have been approved by the DSA and the CDE.
- (i) The Preliminary Plans for the Type II Joint-Use Project, to either reconfigure existing school buildings, construct new school buildings, or both, have been approved by the CDE.

Reconfiguring an existing school building must not reduce the district's capacity or displace another minimum essential facility. In any case involving the replacement of capacity or a minimum essential facility due to the reconfiguration of an existing building, the replacement must be part of the plans submitted in support of the Joint-Use Application, must occur concurrently, and cannot be part of a SFP Application for new construction.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

Section 1859.122.2. ~~Type III Joint-Use Program Eligibility Criteria:~~ Additional Type II Joint-Use Program Eligibility Criteria for Pupil Academic Achievement.

A district requesting funding for a ~~Type III~~ Type II Joint-Use Project ~~that will Reconfigure existing school buildings, construct new school buildings, or both to provide for pupil Academic Achievement~~ may submit a Form 50-07 to the OPSC if ~~all the following criteria in sections 1859.122.1(a), 1859.122.1(b), 1859.122.1(d), 1859.122.1(e), 1859.122.1(f), and 1859.122.1(g)~~ 1859.122.1(h), and 1859.122.1(i) are met and the plans and specifications were accepted by the DSA for review and approval prior to January 1, 2004.

- ~~(a) The Type III Joint-Use Project will be located at an existing public school that does not have the type of facility for which the Joint-Use Funding is requested or the facility is inadequate.~~
- ~~(b) The Type III Joint-Use Project will provide facilities to be used for any of the following:~~
 - ~~(1) To improve pupil Academic Achievement.~~
 - ~~(2) To provide Teacher Education.~~
 - ~~(3) A multipurpose room.~~
 - ~~(4) A gymnasium.~~
 - ~~(5) A library.~~
 - ~~(6) A childcare facility.~~
- ~~(c) At least one of the Joint-Use Partner(s) is:~~
 - ~~(1) An institution of Higher Education if the Type III Joint-Use Project will provide facilities that improve pupil Academic Achievement or provide Teacher Education.~~
 - ~~(2) A governmental agency, an institution of Higher Education or a Non-Profit Organization if the Type III Joint-Use Project will provide facilities to be used as a multipurpose room, a gymnasium, a library or a childcare facility. The Joint-Use Partner(s) may be a county office of education or another district provided the funds contributed by those agencies pursuant to Section 1859.127 are not otherwise available for other SFP projects.~~
- ~~(d) The district has entered into a Joint-Use Agreement that meets the criteria in Education code Section 17077.42.~~
- ~~(e) The district has joint-use square footage eligibility pursuant to Section 1859.124(e).~~
- ~~(f) The construction contract for the Type III Joint-Use Project was not executed prior to April 29, 2002.~~
- ~~(g) The Preliminary Plans for the Type III Joint-Use Project have been approved by the CDE.~~

~~If the Joint-Use Project will serve more than one grade configuration or the Joint-Use Project will serve multiple public school sites, the Joint-Use Project eligibility and funding will be determined based on the highest grade level served by the facility.~~

Reconfiguring an existing school building must not reduce the district's capacity or displace another minimum essential facility. In any case involving the replacement of capacity or a minimum essential facility due to the reconfiguration of an existing building, the replacement must be part of the plans submitted in support of the Joint-Use Application, must occur concurrently, and cannot be part of a SFP Application for new construction.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

Section 1859.123. Qualifying SFP New Construction Project.

For purposes of meeting the requirements in Sections 1859.122(a) ~~or 1859.122.1(a)~~, the district may combine the plans and specifications of its Joint-Use Project with any of the following new construction applications:

- (a) A new construction funding request that is submitted at the same time as the Joint-Use Project application.
- (b) An Approved Application for new construction funding that has not yet received an approval (i.e., not yet on the Unfunded List) if all the following criteria are met:
 - (1) The plans and specifications for the Joint-Use Project were not included in the original DSA approved plans and specifications for the Approved Application for new construction funding.
 - (2) The original DSA approved plans and specifications for the Approved Application for new construction funding are modified to incorporate the plans and specifications for the Joint-Use Project.
 - (3) The district has withdrawn the Approved Application for new construction funding pursuant to Section 1859.107 for the benefit of adding a Joint-Use Project.
 - (4) A revised new construction funding application and the Joint-Use Project application are resubmitted to the OPSC at the same time.
- (c) An Approved Application for new construction funding that has been approved, but has not received a full apportionment (i.e., currently on the Unfunded List) or has been fully funded, if all the following criteria are met:
 - (1) The plans and specifications for the Joint-Use Project were included in the original DSA approved plans and specifications for the Approved Application for new construction funding.
 - (2) The contract for the construction of the Joint-Use Project was not executed prior to April 29, 2002.
 - (3) The district entered into a joint-use agreement prior to the approval of the Approved Application for new construction funding that meets or will be amended to meet the criteria of Education Code Section 17077.42 and:
 - (A) ~~If the request is for a Type I Joint-Use Project, at least one of the Joint-Use Partner(s) is an institution of Higher Education.~~
 - (B) ~~If the request is for a Type II Joint-Use Project, at least one of the Joint-Use Partner(s) is a governmental agency, an institution of Higher Education or a Non-Profit Organization.~~
 - (4) The Joint-Use Project application is submitted separately. There is no requirement that the Approved Application for new construction be withdrawn from the Unfunded List.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

Section 1859.123.1 Qualifying SFP Modernization Project.

For purposes of meeting the requirements in Sections 1859.122.1(a) or 1859.122.2, the district may combine the plans and specifications of its Joint-Use Project with any of the following modernization applications:

- (a) A modernization funding request that is submitted at the same time as the Joint-Use Project application.
- (b) An Approved Application for modernization funding that has not yet received an approval (i.e., not yet on the Unfunded List) if all the following criteria are met:
 - (1) The plans and specifications for the Joint-Use Project were not included in the original DSA approved plans and specifications for the Approved Application for modernization funding.
 - (2) The original DSA approved plans and specifications for the Approved Application for modernization funding are modified to incorporate the plans and specifications for the Joint-Use Project.
 - (3) The district has withdrawn the Approved Application for modernization funding pursuant to Section 1859.107 for the benefit of adding a Joint-Use Project.
 - (4) A revised modernization funding application and the Joint-Use Project application are resubmitted to the OPSC at the same time.

- (c) An Approved Application for modernization funding that has been approved, but has not received a full apportionment (i.e., currently on the Unfunded List) or has been fully funded, if all the following criteria are met:
- (1) The plans and specifications for the Joint-Use Project were included in the original DSA approved plans and specifications for the Approved Application for modernization funding.
 - (2) The contract for the construction of the Joint-Use Project was not executed prior to April 29, 2002.
 - (3) The district entered into a joint-use agreement prior to the approval of the Approved Application for modernization funding that meets or will be amended to meet the criteria of Education Code Section 17077.42 and:
 - (4) The Joint-Use Project application is submitted separately. There is no requirement that the Approved Application for modernization be withdrawn from the Unfunded List.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

Section 1859.124. Joint-Use Project Square Footage Eligibility.

With the exception of funding requests for Extra Cost of a Type ~~II~~ I Joint-Use Project, the district must have square footage eligibility in order to submit an application for Joint-Use Project funding. Depending on the type of Joint-Use Project, the square footage eligibility is calculated as follows:

- ~~(a)~~ If the funding request is for a Type I Joint-Use Project, the square footage eligibility is the amount determined in the Square Footage Chart shown in Section 1859.124.1.
- ~~(b)~~ (a) If the funding request is for a Type ~~II~~ I Joint-Use Project, the square footage eligibility is calculated as follows:
- (1) Determine the total square footage of the joint-use facility for which Joint-Use Project funding is requested.
 - (2) Determine the square footage for the type of joint-use facility for which Joint-Use Project funding is requested in the Square Footage Chart shown in Section 1859.124.1.
 - (3) Determine the square footage eligibility by subtracting the amount determined in ~~(b)~~(a)(2) from the amount determined in ~~(b)~~(a)(1). If a negative number results, the square footage eligibility is zero.
- ~~(c)~~ (b) If the funding request is for a Type ~~III~~ II Joint-Use Project, the square footage eligibility is calculated as follows:
- (1) Determine the total square footage of any existing like-kind joint-use facilities at the same site where the Joint-Use Project facility will be located.
 - (2) Determine the square footage for the type of joint-use facility for which Joint-Use Project funding is requested in the Square Footage Chart shown in Section 1859.124.1.
 - (3) Multiply the amount in ~~(c)~~(b)(2) by 60 percent.
 - (4) If the amount determined in ~~(c)~~(b)(1) is greater than the amount determined in ~~(c)~~(b)(3), the square footage eligibility is zero. If the amount determined in ~~(c)~~(b)(1) is equal to or less than the amount determined in ~~(c)~~(b)(3), the square footage eligibility is the amount determined in ~~(c)~~(b)(2).

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

Section 1859.124.1. Square Footage Facility Chart.

Use the Chart below to determine square footage for purposes of Section 1859.124. The three columns to the left of the Chart indicate the facility types that may be funded under a Type I, or Type II ~~or Type III~~ Joint-Use Project.

**CHART OF SQUARE FOOTAGES
(In Square Feet)**

Type I	Type II	Type III	Facility Type	Elementary School K-6, K-8	Middle School 7-8 or 6-8 (on Separate Campus)	High School 7-12 or 9-12 (on Separate Campus)
X	X	X	Multi-purpose Room (includes food service)	5.3 per pupil Minimum 4,000	5.3 per pupil Minimum 5,000	6.3 per pupil Minimum 8,200
X	X	X	Gymnasium (includes shower/locker)	12.9 per pupil* Minimum 6,828* Maximum 16,000*	12.9 per pupil Minimum 6,828 Maximum 16,000	15.3 per pupil Minimum 8,380 Maximum 18,000
X	X	X	Library	2.3 per pupil plus 600	3.3 per pupil plus 600	4.3 per pupil plus 600
X	X	X	Teacher Education** or Pupil Academic Achievement**	39 per pupil or as approved by CDE		
	X		<u>Pupil Academic Achievement***</u>	<u>39 per pupil or as approved by CDE</u>		
X	X	X	Childcare	60 per child - Minimum 1,440		

*Available only if there is no multipurpose room or the existing multipurpose room is inadequate on the campus and the Joint-Use Agreement includes gymnasium space rather than a multipurpose room.

** Subject to the CDE approval.

*** Subject to the CDE approval. Plans and specifications must accepted by the DSA for review and approval prior to January 1, 2004.

- (a) If the Joint Use Project requests funding for a multi-purpose room, gymnasium or library, multiply the amounts shown for the type of facility proposed in the Joint-Use Project by either (1) or (2) below:
- (1) If the funding request is for a Type I Joint-Use Project, the sum of the latest CBEDS enrollment at the site and the number of pupil grants requested in the Qualifying SFP New Construction Project pursuant to Section 1859.123.
- (2) If the funding is for a Type II Joint-Use Project, the latest CBEDS enrollment at the site.
- (b) If the Joint Use Project requests funding for Teacher Education or Pupil Academic Achievement, multiply the amounts shown, or the amounts approved by the CDE, by the number of pupils that will receive specialized training for teacher education and/or academic achievement.
- (c) If the Joint Use Project requests funding for a childcare facility, multiply the amounts shown by the number of children that will receive services.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

Section 1859.125. Joint-Use Project Grant Determination Based on Square Footage.

If the funding request is to construct square footage, the Joint-Use Grant is the lesser of the amount determined in (a) or (b):

- (a) The sum of the amounts determined below:
- (1) \$173.30 for the Toilet Facilities in the Joint-Use Project as calculated in (a)(1)(B) below:
- (A) Divide the eligible square footage of the Joint Use Project as determined in Section 1859.124 by the total square footage of the joint-use facility.

- (B) Multiply the quotient determined in (a)(1)(A) by the Toilet Facilities in the joint-use facility.
- (2) \$96.30 for non-Toilet Facilities in the Joint-Use Project as calculated in (a)(2)(B) below.
- (A) Divide the eligible square footage of the Joint Use Project as determined in Section 1859.124 by the total square footage of the joint-use facility.
- (B) Multiply the quotient determined in (a)(2)(A) by the non-Toilet Facilities in the joint-use facility.
- (3) 50 percent of site development work that meets the following criteria:
 - (A) It is necessary and applicable to the Joint-Use Project.
 - (B) It meets the requirements for service site development or utility costs as outlined in Section 1859.76(a) and/or (c). Off-site development work is not allowed as part of a Joint-Use Project; however, if off-site development work is necessary pursuant to Section 1859.76(b) for either a Type I or II Joint-Use Project, the district may request the eligible off-site work under the ~~Qualifying~~ SFP New Construction ~~P~~project pursuant to Section 1859.123.
- (C) It is considered excessive site development costs and not eligible for funding under the ~~Qualifying~~ SFP New Construction ~~or Modernization~~ ~~P~~project pursuant to Section 1859.123 ~~or 1859.123.1~~.
- (b) \$1 million if the Joint-Use Project will be located on a school site that is or will be serving Elementary School Pupil(s). \$1.5 million if the Joint-Use Project will be located on a school site that is or will be serving Middle School Pupil(s). \$2 million if the Joint-Use Project will be located on a school site that is or will be serving High School Pupils.

If the district is requesting funding for site development work applicable to the Joint-Use Project, the district must submit a detailed cost estimate and appropriate DSA approved plans, with the Form SAB 50-07. The cost estimate must include appropriate justification documents that indicate the work is necessary to complete the Joint-Use Project and conform to the requirements of Section 1859.76.

Utility service(s) cost shall be prorated, if necessary, for any excess capacity not needed to service the Joint-Use Project.

The dollar amounts shown in (a) are adjusted in a manner prescribed in Section 1859.71 and are eligible for Excessive Cost Hardship Grant(s) pursuant to Section 1859.83 (a), (b) and (d). The district may be eligible for the funding provided to initiate and enforce a LCP as prescribed in Section 1859.71.4.

The Joint-Use Grant amounts provided in this Section and Section 1859.125.1, if applicable, shall be deemed the full and final apportionment for the application. Any costs incurred by the district beyond the Joint-Use Grant amount and the Joint-Use Partner(s) and district financial contribution pursuant to Section 1859.127, shall be the responsibility of the district and/or the Joint-Use Partner(s).

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

Section 1859.125.1. Additional Type # I Joint-Use Project Extra Cost Grant.

In addition to the square footage Joint-Use Grant provided in Section 1859.125, a Type # I Joint-Use Project may receive funding for Extra Cost equal to the lesser of (a) or (b):

- (a) An amount determined by subtracting (a)(2) from (a)(1):
 - (1) The sum of the following:
 - (A) 50 percent of the estimated cost to construct the Joint-Use Project.
 - (B) 50 percent of site development work that meets the following criteria:
 - 1. It is necessary and applicable to the Joint-Use Project.
 - 2. It meets the requirements of Section 1859.76(a) and/or (c).
 - 3. It is considered excessive site development costs and not eligible for funding under the ~~Qualifying~~ SFP New Construction ~~P~~project pursuant to Section 1859.123.

4. The district did not receive funding for the site development work under Section 1859.125.
- (2) The sum of the following:
 - (A) \$173.30 for the Toilet Facilities in the Joint-Use Project.
 - (B) \$96.30 for the non-Toilet Facilities in the Joint-Use Project.
 - (b) An amount determined by subtracting (b)(2) from (b)(1):
 - (1) \$1 million if the Joint-Use Project will be located on a school site that is or will be serving Elementary School Pupil(s). \$1.5 million if the Joint-Use Project will be located on a school site that is or will be serving Middle School Pupil(s). \$2 million if the Joint-Use Project will be located on a school site that is or will be serving High School Pupils.
- (2) The Joint-Use Grant amount determined in Section 1859.125 based on square footage, if applicable.

If the district is requesting funding for site development work applicable to the Joint-Use Project, the district must submit a detailed cost estimate and appropriate DSA approved plans with the Form SAB 50-07. The cost estimate must include appropriate justification documents that indicate the work is necessary to complete the Joint-Use Project and conform to the requirements in Section 1859.76.

Utility service(s) cost shall be prorated, if necessary, for any excess capacity not needed to service the Joint-Use Project.

The amounts shown in (a) are adjusted in a manner prescribed in Section 1859.71. The district may be eligible for the funding provided to initiate and enforce a LCP as prescribed in Section 1859.71.4.

The Joint-Use Grant amount provided in this Section and Section 1859.125, if applicable, shall be deemed the full and final apportionment for the application. Any costs incurred by the district beyond the Joint-Use Grant amount and the Joint-Use Partner(s) and district financial contribution pursuant to Section 1859.127, shall be the responsibility of the district and/or the Joint-Use Partner(s).

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

Section 1859.126. Joint-Use Project Funding Priority and Funding Availability.

In each application acceptance period, the Board shall fund eligible Joint-Use Projects as follows:

- (a) Type I Joint-Use Projects in the following order:
 - (1) By date order received for the applications the districts have designated as first funding priority.
 - (2) By date order received for the applications the districts have designated as second funding priority and so on until all Type I Joint-Use Project applications have been apportioned.
- (b) Type II Joint-Use Projects in the following order:
 - (1) By date order received for the applications the districts have designated as first funding priority.
 - (2) By date order received for the applications the districts have designated as second funding priority and so on until all Type II Joint-Use Project applications have been apportioned.
- ~~(c) Type III Joint-Use Projects in the following order:~~
 - ~~(1) By date order received for the applications the districts have designated as first funding priority.~~
 - ~~(2) By date order received for the applications the districts have designated as second funding priority and so on until all Type III Joint-Use Project applications have been apportioned.~~

If a Joint-Use Project cannot be fully apportioned because of the funding available, the district may either accept the available funding as the full and final apportionment for the project or refuse funding. If funding is refused, the application will be returned to the district and the Board shall consider funding the next project eligible for an apportionment based on the above funding priority mechanism.

Any Joint-Use Project not considered for an apportionment because of the above funding priority mechanism shall be returned to the district. A district may resubmit a returned Joint-Use Project application during the subsequent application acceptance period identified in Section 1859.121(b), if the application meets the eligibility criteria at the time of re-submittal.

Any funds not apportioned in the application acceptance period identified in Section 1859.121(a) or any Joint-Use Project funds returned due to projects being rescinded or reduced to cost incurred shall be made available for apportionment in the application acceptance period identified in Section 1859.121(b).

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

Section 1859.127. Joint-Use Partner(s) Financial Contribution.

~~The Joint-Use Partner(s) is required to make~~ A financial contribution towards the cost of the Joint-Use Project equal to the state funding provided by these Regulations is required. Any funding provided by the Joint-Use Partner(s) cannot be funds that would otherwise be available to the district. The contribution made by the Joint-Use Partner(s) shall be no less than 25 percent of eligible project costs. The remaining local contribution may come from any other district source that would not otherwise be available to the State Allocation Board. If the school district has passed a local bond which specifies that such funds are to be used for the Joint-Use Project, then the school district may opt to provide up to the full 50 percent local share of eligible costs. Any funding provided by the Joint-Use Partner(s) cannot be funds that would otherwise be available to the district.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

Section 1859.129. Time Limit on Apportionment.

- (a) If the district received an apportionment for a Type I Joint-Use Project or ~~a Type II, part of a qualifying SFP Modernization project,~~ Joint-Use Project, the district is subject to the time limit on the apportionment as outlined in Education Code Section 17076.10.
- (b) If the district received an apportionment for a Type ~~III~~ II Joint-Use Project, ~~not part of a qualifying SFP Modernization project,~~ the district:
 - (1) Has one year from the date of that apportionment to submit the plans and specifications to the OPSC for the Joint-Use Project that have been approved by the DSA and the CDE (plans only), otherwise the apportionment will be rescinded without further Board action.
 - (2) Has 18 months from the date the DSA and CDE approved plans were submitted to the OPSC to submit a completed Form SAB 50-05 or the apportionment will be rescinded without further Board action.
 - (3) Is subject to substantial progress time limit on the apportionment as outlined in Subdivision (b) of Education Code Section 17076.10.

Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17076.10, 17077.40, 17077.42 and 17077.45, Education Code.

Section 1859.130. Eligible Joint-Use Project Expenditures.

Joint-Use Project Grants shall be expended as set forth in Education Code Section 17072.35 with the exception of site acquisition, including lease of land. When a new site is necessary for a Type I ~~or II~~ Joint-Use Project, the district may request site acquisition costs under the ~~Qualifying SFP New Construction P~~project pursuant to Section 1859.123.

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Note: Authority cited: Sections 17070.35 and 17075.15, Education Code.

Reference: Sections 17077.40, 17077.42 and 17077.45, Education Code.

State Allocation Board Implementation Committee
January 8, 2004

Lease Lease-Back Agreements
(Education Code Section 17406)

Purpose

To discuss the use of lease lease-back agreements (LLB) for project delivery of facilities funded through the School Facility Program (SFP).

Summary

The use of Education Code Section 17406 as a project delivery method for public school construction projects is growing. Increasingly, districts are interpreting this code section to allow the award of a public works project without competitive bid. Some districts do institute a competitive selection process voluntarily, but many do not. Districts maintain that this alternative is often superior to the standard low-bid procedure generally required by the Public Contracts Code.

The contractual arrangements by which projects are constructed using state bond funding is governed by law and is not generally subject to State Allocation Board regulation or oversight. However, the integrity of the use of general obligation bonds allocated by the SAB must be above reproach. An interpretation of law that would potentially allow billions of dollars of public works projects funded with state bonds to be contracted through a 'sole-source' mechanism should be closely examined. That is the primary purpose of this report.

Background

Education Code (EC) Sections 17400 through 17425 provide a method for financing school construction. Within that financing method, Education Code (EC) Section 17406 provides a mechanism whereby a district may let district real property to a development entity without competitive bidding if the developer will construct a school facility on the property for the use of the school district. An increasing number of districts are using this approach to construct new facilities and modernize existing facilities without competitive bid. Generally, the districts then request State funding for the purpose of buying out the lease and acquiring the facility.

To date, neither the State Allocation Board (SAB) nor Office of Public School Construction (OPSC) has taken a position on when the use of lease arrangements under EC Section 17406 is appropriate or when the exemption from competitive bidding is valid. It has been the belief and the practice of the OPSC that the obligation to determine the appropriate and legitimate use of any contract delivery method permitted in law rests with the school district. The OPSC has focused instead on providing guidance to those districts that elect to use lease, lease-back agreements to insure that there is no conflict with SFP law and regulations or with statutes relating to the use of the state general obligation bonds.

Description

Over a period of several years, the OPSC responded to a few individual school district questions on issues related to the use of EC 17406. These responses were intended to guide the districts as to how to structure their agreements so as to avoid conflicts with SFP laws and regulations. Consistent with general OPSC practice, the appropriateness of the use of EC 17406 was not addressed. Without the knowledge of the OPSC, the responses were widely disseminated among school districts and their legal advisors as the OPSC “policy” on lease, lease-back project delivery methods.

As a result of a rapidly increasing number of inquiries regarding EC Section 17406, the OPSC became aware that the use of lease, lease-back agreements was growing. For the first time, the OPSC also became aware that such agreements were now in common use on modernization projects, something that had never been previously discussed with the office. Although staff continued to take the position that it was the district’s responsibility to determine when it was appropriate and legal to use EC Section 17406 as a project delivery method, staff also became concerned that there was no official SAB position or regulation on any aspect of the issue. To address that, staff began discussions on the use of EC Section 17406 at the Board’s Implementation Committee. The discussions were designed as a fact-finding effort to learn about the use of lease lease-back agreements and to develop regulations to solidify the policy statements made over several years of correspondence.

Following four separate Implementation Committee meetings, the OPSC presented proposed changes to the State Allocation Board’s regulations concerning the interface of lease, lease-back agreements and the SFP. Again, the regulations focused on largely technical issues and not on when the use of EC 17406 was appropriate. However, the presentation, made in September 2003, did include a report to the SAB regarding the use of lease, lease-back agreements as a delivery method for projects funded under the SFP. It was apparent that this delivery method was being used or considered by a significant number of districts. The OPSC wished to inform the Board that projects constructed using the lease, lease-back method were being presented routinely for funding on consent calendars.

When the item was presented to the SAB, some members expressed concerns about the effect that widespread use of EC Section 17406 might have on the Public Contract Code (PCC) competitive bidding requirements. The SAB declined to take action on the recommended regulation changes and asked that staff prepare further information relating to the issue for consideration at a future meeting.

The Current Use of EC Section 17406

In broad terms there are currently two types of lease, lease-back arrangements being used to construct state funded projects:

1. The project is financed by the developer/contractor team and the district pays a yearly lease to use the facility. The district makes no other payments to the developer, who carries the outstanding cost of the project. The lease, by law, may be up to 40 years in length. It may include an agreement to terminate the lease at any time.

2. The project is paid in full by the district with state or local funds, or a combination of both. In this case a “lease agreement” may exist, but it is designed to be terminated at the end of the construction. The lease payments, if any, are made during the course of construction and at the completion of the project. They are essentially progress payments as would be found on a traditional construction contract in that they constitute the entire cost of the construction project.

Staff believes that agreements structured as in situation #1 when competitively bid, constitute the intended use of Article 2 and of EC 17406 in particular.

However, staff believes that the vast majority of projects, which received or will receive School Facility Program funding were done under the second scenario. These projects are not financed by the developer/contractor team even for a short period. The projects are paid in full by the district using state and local funds. Since there is no legitimate lease, staff does not believe that Article 2 has any relevance. Please see further discussion in this report.

The Growing Use of Lease, Lease-Back Agreements

At the September meeting, the SAB asked staff to quantify the number of projects which have used lease lease-back agreements to deliver projects. This information is not reported to OPSC as a part of the application or funding process. Although it may be a matter of discussion in the closeout audit of an individual project, it is not captured and recorded in a way that would allow a count of the projects. For future reference, the Board may wish to capture this information by modifying the fund release certification received from applicant districts.

The San Diego County Office of Education did survey districts within that county, and as a courtesy, provided Staff with the results. They found that in the last 6 years, 35 to 40 projects were done with lease lease-back. The county estimates that approximately 25% were modernization projects. The County comprises about 10% of the K-12 population.

Arguments in Favor of the Lease, Lease-Back Delivery Method

School districts which have used the lease lease-back project delivery method cite the following as reasons for selecting it over the traditional design, bid, and build approach:

- ❑ **Guaranteed price**
The district is able to negotiate a fixed price for the lease and, if necessary, the purchase price of the project. Unanticipated costs are the responsibility of the contractor / developer, not the school district.
- ❑ **Team approach**
Districts have expressed the opinion that lease, lease-back allows a team approach to the construction of school facilities. The district, developer and contractor all have an interest in a project completed on time and in budget.
- ❑ **Known contractor**
Contractors can be selected on the basis of their record of success, recommendations from previous clients and financial strength.
- ❑ **No experienced staff at district.**

Many districts do not have experience with large construction projects. The responsibility for co-ordination of the project, obtaining required approvals, and project scheduling become the contractor / developers, who have demonstrated experience in similar school construction projects.

- ❑ Value engineering opportunities
- ❑ Contractors and subcontractors come from other industries. Contractors not normally interested in participating in the 'low bid' process may be willing to participate in negotiated contracts as permitted in the lease, lease-back process. This brings new and highly qualified contractors into the school construction arena.

All of the benefits ascribed to the lease, lease-back process are contingent on one thing; avoiding competitive bidding. Many, perhaps most, school district administrators and facility managers consider the competitive bidding process as required under the Public Contracts Code to be problematic. They assert that the process leaves them with little control over the selection of the contractor for the project and places them in financial jeopardy if the contractor selected is unwilling or unable to perform the construction as planned. The lease, lease-back process allows the district to select the contractor / developer based on criteria other than cost.

Concerns About the Use of the Lease, Lease-Back Delivery Method

While advocates of the use of EC Section 17406 argue that it is less cumbersome than the competitive bidding process and that it allows a team approach to the development of the project, it is important to keep in mind the reasons that competitive bid requirements were added to the Public Contracts Code. The intent was not to make it harder to complete public works projects, but to ensure that State funds were being used in an efficient and cost-effective manner. The goal of the Legislature in enacting the code was¹:

1. To ensure full compliance with competitive bidding statutes as a means of protecting the public from misuse of public funds, and;
2. To provide all qualified bidders with a fair opportunity to enter the bidding process, thereby stimulating competition in a manner conducive to sound fiscal practices, and;
3. To eliminate favoritism, fraud, and corruption in the awarding of public contracts.

The interpretation and growing use of EC Section 17406 means that significant numbers of projects and significant sums of public funding are not being subjected to the checks and balances of the competitive bid process. Recent interpretations made by some interested in furthering the use of EC Section 17406 are so broad as to make the public contract competitive bid requirements moot, effectively eliminating competitive bidding requirements on all new construction and modernization public school projects whether funded locally or in conjunction with the State program.

In addition to the lack of checks and balances on the selection of contractors, there may be other reasons to proceed cautiously when using lease lease-back arrangements which do not provide a long term financing mechanism for the project.

¹ Public Contracts Code, Section 100

Primary among these is summarized in the Supreme Court majority opinion in *The City of Los Angeles v. Offner* where the following was stated:

"It has been held generally in the numerous cases that have come before this court involving leases and agreements containing options to purchase that if the lease or other agreement is entered into in good faith and creates no immediate indebtedness for the aggregate installments therein provided for but, on the contrary, confines liability to each installment as it falls due and each year's payment is for the consideration actually furnished that year, no violence is done to the constitutional provision. If, however, the instrument creates a full and complete liability upon its execution, or if its designation as a 'lease' is a subterfuge and is actually a sales contract in which the 'rentals' are installment payments on the purchase price for the aggregate of which and immediate and present indebtedness or liability exceeding the constitutional limitation arises against the public entity, the contract is void."(underlining added)

It appears to the Office of Public School Construction that some of the following circumstances do not exist in all lease lease-back contracts presented for SFP funding and therefore may be in violation of the principle set forth in *Offner*.

- ❑ The lease must be entered into in 'good faith.' Presumably that means that both parties to the agreement intend that a lease arrangement will exist and will be implemented.
- ❑ The lease arrangement may not be a subterfuge. Many districts openly admit that they are using lease lease-back contracts for the perceived benefits listed earlier which are only available if there is no competitive bid requirement.
- ❑ The agreement may not create an immediate indebtedness beyond each yearly installment. Some agreements require 'pre-lease' or 'rental' in one form or another which amount to the full cost of the facility. It appears that an immediate indebtedness has been created by the agreement.
- ❑ The District must own the site on which the project will be constructed. Under EC 17402, the district owns the site if it holds title, has an option to purchase, or is acquiring the site through eminent domain. An arrangement whereby the option to purchase the site is with the developing entity could be construed as a subterfuge to avoid EC 17407. That section allows lease lease-back on property owned by others, but specifically requires competitive bidding of the agreement.

It is possible then that the school construction contract, using a lease agreement that does not meet the standard of the *Offner* decision, may be invalid, raising the question of the appropriateness of the state funding apportionment.

The Purpose of EC Section 17406

Education Code Section 17406 reads in part as follows:

17406. (a) Notwithstanding Section 17417, the governing board of a school district, without advertising for bids, may let, for a minimum rental of one dollar (\$1) a year, to any person, firm, or corporation any real property that belongs to the district if the instrument by which such property is let requires the lessee therein to construct on the demised premises, or provide for the construction

thereon of, a building or buildings for the use of the school district during the term thereof, and provides that title to that building shall vest in the school district at the expiration of that term. The instrument may provide for the means or methods by which that title shall vest in the school district prior to the expiration of that term, and shall contain such other terms and conditions as the governing board may deem to be in the best interest of the school district.

(The entire section may be seen in Attachment C.)

Advocates of the use of lease, lease-back agreements argue that the only requirement in EC Section 17406 is that the district owns the property to be developed and that the property be 'let' to the developer for at least \$1 per year. Under this circumstance the district is then relieved from the normal PCC competitive bid requirement for the entire construction project. At this point some advocates maintain that a lease, lease-back arrangement is required for the actual buildings, while others believe a simple construction contract is all that is required.

It is the opinion of staff and SAB counsel that either interpretation expands the meaning of EC 17406 beyond its simple intent and ignores other requirements in the same article regarding competitive bid requirements for leases (EC 17417). There is no disagreement that EC 17406 is clear in allowing districts to lease a district owned site to a person, firm or corporation when the lessee agrees to construct buildings for the use of the school district. However, the exemption from public bidding allowed in this section applies only to the property lease from the district to the developer. It does not address how the contract for the construction of the buildings is procured nor does it provide an exemption to competitive bidding for that contract.

If the building to be constructed on the property let to the developer using EC 17406 is to be leased to the district, Staff believes the provisions of EC 17417 *Resolution of governing board declaring intention to enter into lease or agreement; opening and accepting bids*, must be followed. That section specifies that the governing board of a school district ...

"...shall adopt a resolution declaring its intention to enter into a lease or agreement pursuant to this article... The resolution shall fix a time ... at which sealed proposals to enter a lease or agreement with the school district will be received from any person, firm, or corporation, and considered by the governing board... At the time and place fixed in the resolution for the meeting of the governing body, all sealed proposals which have been received shall, in public session, be opened, examined, and declared by the board. Of the proposals submitted which conform to all terms and conditions specified in the resolution of intention to enter a lease or agreement and which are made by responsible bidders, the proposal which calls for the lowest rental shall be finally accepted, or the board shall reject all bids." (underline added.) (The entire section may be found in Attachment C)

Nothing in EC 17406 provides an exemption from this requirement or, when applicable, from the PCC requirements. Instead, EC 17406 provides exactly what it states: a simple manner to transfer district property without competitive bid to a developer who has been previously selected by competitive bid to construct a building for the use of the district.

Using EC 17400 et al. As a Financing Mechanism

Education Code Sections 17400 et al., including EC 17406, make up Article 2 of Chapter 4 of Part 10.5 of the Education Code, entitled *Leasing Property*. It describes the requirements imposed on school districts considering the acquisition of school facilities through lease agreements. As confirmed by the Appeals Court ruling in *Morgan Hill USD v. Amaroso*, the article is about financing. In that case the court stated that, “The Education Code creates the following method for financing school construction.” The court then went on to describe EC Sections 39300 through 39325, which are now renumbered as 17400 through 17425. Thus EC 17400 through 17425 is a method of financing school construction in which EC 17406 addresses the mechanism by which the school district can let the property where the construction will take place. Staff believes that virtually none of the projects currently using lease, lease-back arrangements actually have financing provided by the developer. If a “lease agreement” other than the site lease exists at all, it serves no significant purpose other than as a construction contract. The full cost of the project is borne by the district using the normal funds it has available for capital projects. Normal progress payments are made to the contractor through the course of construction, and the project is completely paid for by the district at the project completion. The projects are in every regard typical public works projects, except that they have not been competitively bid.

Since no financing exists in the lease lease-back agreement (or there is no lease agreement at all), the use of Article 2 appears to be inappropriate.

Competitive Selection Processes

As noted elsewhere in this Report, current interpretations of EC 17406 hold that competitive bidding is not required. However, some districts do use a competitive selection process. While not a ‘low bid’ selection, the competitive mechanism may include open participation and consideration of cost among other factors.

There are several reasons to have a selection process, even when the district believes that it is not specifically required.

- ❑ Helps ensure a competitive cost for the project.
- ❑ Allows the district to select the most qualified firm to design and construct the project, based on experience, financial capability, and other factors.
- ❑ Provides a public process open to review.
- ❑ Allows open participation.

While Staff believes that a low bid requirement already exists for leases, it is clear that school districts do not agree in every case. The legislature may wish to consider the option of requiring a competitive selection process rather than a competitive bid process. To that end, several selection processes already in use follow.

- ❑ With the permission of the authors, descriptions of the processes used by the Los Angeles Unified School District, the Building Industry Association and recommendations developed by Best Best and Krieger, LLP are attached to this item for reference and comparison (Attachments A-1, A-2, A-3 respectively).

- ❑ Legislation governing the use of design build processes (EC Section 17250.25(c)) provides two options for selection of the design / build team: lowest responsible bid or 'best value' selection of prequalified candidates based on a weighted scoring method. The best value method gives the school district flexibility in awarding a project based on factors other than price. The required selection criteria are price, technical expertise, life cycle costs, skilled labor force, and safety record. In addition, the district may consider design approach, project approach, project features, schedule, value engineering and warranty. This process can be time consuming and, in the opinion of some, is fraught with protest opportunities; however, it does provide an open process which assists the district in finding a qualified construction team at a competitive price while also keeping public safeguards in place.

Lease Lease-Back Arrangements in SFP Projects.

Regardless of debates about the appropriate use of EC Section 17406 or about whether competitive selection processes should be used, districts are currently using lease lease-back agreements to construction SFP new construction and modernization projects. Amendments to the Board's regulations are needed to advise on several issues as follows:

- ❑ The District must have title to the site on which the project will be constructed at the time that the apportionment is approved by the SAB.
- ❑ The lease agreement must contain the following provisions or information:
 - The value of the lease.
 - A provision that the title to the improvements on the site shall vest with the District upon completion of the project.
 - A provision that the lease agreement shall terminate within 180 days of the filing of a notice of completion or occupancy of the project by the District, whichever occurs first.
- ❑ State bond funds may not be used to make lease or rental payments (EC 17070.71 (c))

These requirements were put into proposed regulations and presented to the SAB at the September 2003 meeting. The proposals may be seen in Attachment B.

Conclusion

1. The regulations in Attachment B should be adopted by the State Allocation Board at the earliest opportunity to provide needed guidelines to districts.
2. The State Allocation Board may wish to consider if the current and widespread interpretation that EC Section 17406 exempts projects from competitive selection or bidding processes is appropriate for projects funded from state bonds.

3. State policy makers may wish to investigate the claims by school districts that public agencies need better tools to deliver quality public facilities on time and in budget while also maintaining protections on the use public funds.
4. Legislation should be considered to address the proper use of EC Section 17406 and to clarify, if necessary, the relationship of that section to the entire article on leases in EC Section 17400 through 17425.

Attachment A-1

Los Angeles Unified School District
Facilities Services Division
POLICY GUIDELINE

Facilities Contracts Policy

For
Lease Lease-Back

Original Issue Date:
February 14, 2003

Los Angeles Unified School District
Facilities Services Division
POLICY GUIDELINE

LEASE LEASE-BACK POLICY

Policy:

Pursuant to California Education Code 17406, the District is authorized to enter into lease with a developer wherein District leases its owned land to a developer for a nominal fee while the developer constructs school facilities. At the completion of the lease term, the title to the facility shall vest in the District. The code section explicitly allows for the selection of the developer without advertising for bid.

While the Code explicitly states that no advertisement for bid is necessary to conduct acquisition under Section 17406, it shall be the policy of Facilities Services Division to conduct a full and open competition (*see Policy CT-OO1*) whenever possible in acquiring and constructing school facilities under Section 17406. A full and open competition results in the best value to the District.

Therefore, any acquisition and construction of facilities under California Code Section 17406 shall be conducted with full and open competition whenever possible using Request for Qualification and or Request for Proposal with a fair selection process based on advertised criteria. The final selection of a developer will be based on the best value provided to the District.

INTEROFFICE CORRESPONDENCE

Los Angeles Unified School District

TO: Members, Facilities Committee
Roy Romer

DATE: March 12, 2003

FROM: Sam Yoshida
Director, Facilities Contracts

SUBJECT: EDUCATION CODE SECTION 17406 POLICY FOR NEW SCHOOL
CONSTRUCTION

Background

Pursuant to California Education Code Section 17406, the District is authorized to enter into a lease agreement with a developer wherein a District leases its owned land to a developer for a nominal fee while the developer constructs District facilities. At the expiration of the lease term, or earlier as provided in the contract document, title to the facilities shall vest in the District.

Decision to Pursue 17406 Procedures

The authority to pursue any District facilities acquisitions through 17406 Procedures shall rest with the Chief Facilities Executive, subject to approval by the School Board. It is the responsibility of the subordinate facilities managers to brief the Chief Facilities Executive with pertinent facts and rationale for recommending the use of California Education Code Section 17406 and to receive his concurrence and the approval of the School Board prior to engaging in any further activities relating to the acquisition.

Any recommendation to utilize the 17406 Procedures shall include the benefits that can be achieved through use of the method as compared to other contracting methods. Any recommendation and briefing shall be documented and remain as part of the contract file.

Contracting Officer

17406 Procedures shall be through the competitive proposal process, and as such the Chief Facilities Executive shall act as the Contracting Officer (CO). Even though Education Code 17406 does not specifically require competition, it should be noted that the District intends to employ full and open competition for 17406 Procedures whenever possible.

The CO shall be the contracting authority in entering into and concluding the discussions with the proposers and determining the successful proposer. The CO shall approve the Acquisition Plan, which is the strategy that will guide the team through the contracting process. Throughout the competitive proposal process, the CO must be kept informed. The CO shall be the authority to approve the Acquisition Plan, appoint the Acquisition Team and Selection Panel, approve the negotiation memorandum, and approve and execute the final contract.

Acquisition Team

When authorized by the CO to proceed with the 17406 Procedures, the subordinate facilities managers shall recommend appointment of the Acquisition Team including technical, legal and contracts team members to develop an Acquisition Plan, Request for Proposal (RFP), schedule, and perform other pre-contract functions.

Acquisition Plan

When approval to pursue 17406 Procedures has been obtained, the Acquisition Team shall prepare an Acquisition Plan. The Acquisition Plan provides the strategy for the 17406 Procedures.

At a minimum, the Acquisition Plan shall address recommendations for:

- RFP selection criteria
- Project-specific adaptation of the District's standard 17406 Procedures contracts
- selection of panel members, including any nonvoting advisors
- description of the evaluation process to establish the competitive range, and
- general "best value" (cost and schedule, etc.) objectives for the procurement.

Upon approval of the Acquisition Plan by the CO, the Acquisition Team will proceed with the procurement process, keeping the CO apprised of the progress.

Request for Proposal

The Acquisition Team shall develop an RFP that reflects Project-specific scope requirements as well as the following standard set of information: (a) description of the Project, (b) authority under which the solicitation will be issued, (c) the selection criteria, (d) form of response, and (e) other pertinent facts regarding the response to be provided.

Advertisement

Prior to issuance of the RFP, the Acquisition Team shall advertise in national and or local media the District's intention to contract for the Project through 17406 Procedures, together with pertinent information that will inform the construction and project-development community.

Contract Documents

The contract documents that set forth the requirements of the lease, construction of the facilities, fee structure, and pertinent terms and conditions for the Project have been jointly developed by the Office of General Counsel and outside legal counsel.

The Acquisition Team, including legal counsel, shall develop the Project-specific contract documents.

Other Requirements for Contract Documents

There are a number of additional requirements that must be considered in the 17406 Procedures contract documents. They are (a) application of the Project Stabilization Agreement; (b) requirement that the District shall supply inspectors approved by the State of California Division of State Architect (DSA) to inspect the on-going construction work; (c) applicability of Prevailing Wage Rates pursuant to California Labor Code Section 39321; (d) approval of any construction design by the DSA; (e) surety bonds; (f) insurance; and (g) indemnification. These requirements are matters of policy, and the senior management of the Facilities Services Division must be consulted prior to excluding any of the requirements from the contract documents.

Selection Criteria

Generally, the following selection criteria will be used:

1. Fee structures, which may be Guaranteed Maximum Price (GMP) with savings distribution plan. GMP is the cap that provides cost control for the District, and the

Selection Criteria – cont’d

savings distribution plan insures that the District can share in any savings that the proposer may achieve. Incentives such as early completion or exceeding pre- established safety standard can also be used to increase the value provided to the District. Identification of the GMP depends on whether the Project design is sufficiently complete to estimate the cost and the price. Therefore, in some cases the GMP may not be identified at the time of award of the contract. The Acquisition Team may identify other fee structures for consideration by the Contracting Officer.

2. Schedule control system that will enhance the likelihood of timely completion of the project.

3. Design, if required to be completed by the proposer, must also be considered. Experience and ability of the designer, past relationship with the proposer, and any presentation of proposed design scheme may be considered by the Selection Panel.

4. Qualification, experience and financial capability of the development team is a factor to be considered. The experience and qualifications of the construction contractor member of the team shall be a factor to be considered.

5. Plan for utilization of Local Small Business Enterprises (LSBE) must be included as a selection criterion. The minimum LSBE participation goal is 25%, and incentives should be given for higher participation

Selection Panel

The Selection Panel, which mayor may not be the same members as the Acquisition Team, will be District employees who have knowledge of design and construction and also include an employee versed in construction contracting processes. Non-voting advisors to the Selection Panel may be made up of non-employees.

Negotiation Process

The Selection Panel shall meet and review the proposals by comparing them to the established selection criteria, considering and analyzing the proposals, determining the competitive range based on the analysis, and reporting back to the CO with a recommended competitive range. Once the competitive range is approved by the CO. the Selection Panel shall negotiate with each proposer in the competitive range to achieve, the best value for the District. Once the negotiation is completed, the Selection Panel shall ask for the Best and Final Offer from the proposers and shall recommend the proposer who brings the best value to the District. The recommendation shall be in a form of a negotiation memorandum addressed to the CO and shall discuss pertinent and salient points of negotiation that have taken place with each of the proposers and how the panel settled on the best value recommendation.

Award of Contract

When the CO is satisfied that the best value recommendation has been made, he shall - " approve the memorandum of negotiation and have the Facilities Contracts Office finalize the contract documents for execution by the successful proposer, subject to legal concurrence. When the proposer-executed contract documents are returned, they shall be forwarded to the office of Director, Facilities Contracts for review, and then to the Chief Facilities Executive for execution after approval by the School Board.

cc: Members. Board of Education

D. Mullinax J. McConnel1 R. Sheehan

J. Mehula J. Crain R. Rasmussen

Attachment A-2

Draft LEASE LEASE-BACK- BID PROCESS *Office of Public School Construction* November 24,2003

1. Protect public from misuse of funds (note: SB 50 is a "grant" program, which protects State and transfers responsibility and liability to District).
2. Provide all qualified bidders with fair opportunity to enter the bidding process, thereby stimulating competition in a manner conducive to sound fiscal practices.
3. Eliminate favoritism, fraud and corruption.

Pre-Selection of Contractors

- A. Selection process begins only after: (1) the District has retained an Architect of Record who has prepared complete Construction Drawings and Education Specifications; (2) the Construction Drawings and Education Specifications have been approved by the Department of State Architect, California Department of Education and District Governing Board of Education, (3) Site has been approved by the California Department of Education; (4) legal counsel has been retained to review the Request for Qualifications and Request for Proposals; and, (5) the District must have an approved Labor Compliance Program.
- B. District and Architect shall select qualified contractors to bid on the Project. This pre-selection process shall be based on each contractor responding to a Request for Qualifications from the District and Architect. The District and Architect shall qualify contractors to bid based on, but not limited to, the following criteria:
 1. Previous successful school projects, especially successful modernization or construction projects located within the district and other Lease Lease Back projects (i.e. contractor is active locally and uses local labor force).
 2. History of contractor to deliver school on time and on budget (reasonable pricing), including history of extra work authorizations/change orders.
 3. Site visits to the contractor's active sites.
 4. 4. Understanding of the Labor Compliance Program and ability to meet prevailing wage requirements.
 5. Interviews with Contractor references.
 6. Current workload and ability to retain the necessary labor force and technical expertise to build a quality school that meets the plan specifications.
 7. Ability to Finance the project, bonding capacity. ability to meet insurance requirements and comments on warranty service and follow-up services.
 8. Technical expertise, including resumes of management team, quality of workmanship standards, history on performance and completion of previous projects, interaction with architects and districts.
 9. Acceptable safety record.

Bid Process

- A. Once the contractors are pre-selected, the Architect holds a Pre-Bid Meeting to discuss the project. The Bid Package, which includes the Plans and Specifications and proposed Lease Arrangements, are presented to each bidder. Discussions are held in relationship to the project site, schedules, the bid dates and time, Labor Compliance, the contract/lease arrangements, bonding and insurance, roles of the District, Architect, Construction Manager, etc. and any other issues that need discussion.

- B. The bidding process begins with the contractors requesting clarifications on issues through a submittal of a Request for Additional Information to the Architect who responds to all bidders in writing.
- C. The bids are due by a specific date and time in a predetermined location. The District and the Architect receives the bids and reviews them for completeness of proposal including, but not limited to, the following: (1) Bid Amount; (2) Proposed Lease Lease-Back Agreement; (3) Contractors License Numbers; (4) List of applicable subcontractors and background information on each subcontractor; (5) List of applicable consultants that might be used on the project and background information on each consultant (e.g. soils" civil, landscape); (6) Non Collusion Statement; (7) Bonding; (8) Designation of Subcontractors list; (9) Certification of Bidder and Qualifications; (10) Designation of Sureties; (11) List of Owners (reference list); (12) Worker's Compensation Certificate; (14) General Liability Insurance and amounts; (14) Tax Payer I.D. Certification; (15) DVBE Certification; (15) time frame/schedule; and, (16) Acknowledgement of Addendum and other relevant information as determined by each district.
- D. The Architect and District then proceed to set up Post Bid Interviews to discuss the bid and project. The Post Bid Interview includes, but is not limited to, the following: (1) discussion of the Lease Lease-Back Agreement; (2) discussion on schedules; (3) value engineering; (4) workmanship; (5) site preparedness; (6) site management; (7) bid package components; (8) subcontractors; (9) lead time orders; (10) interaction with other subcontractors; (11) implementation of the Labor Compliance Program; (12) and the Districts and Architects role.

Award Contract

After evaluation of the proposals, the District and Architect awards the Lease Lease-Back Contract to the best negotiated bid based on: (1) contractor's ability to meet all the aforementioned criteria; (2) consideration of the "lowest responsible bid"; (3) qualitative *r* assessment ("best value") of the contractor to deliver the best quality school on time and on budget; and, (4) consideration of the best Lease Lease-Back Agreement.

Attachment A-3

BEST BEST & KRIEGER LLP
A CALIFORNIA LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL
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November 19, 2003

VIA F A CSIMILE & U.S. MAIL

State Allocation Board
Implementation Committee
c/o Bruce B. Hancock
1130 K Street, Suite 400 Sacramento, CA 95814

Re: Suggested Procedures for Lease-Lease Back Projects Dear Mr. Hancock:

Dear Mr. Hancock:

As we discussed at the SAB Implementation Committee meeting earlier this month, below please find a brief summary of the process we recommend to our school district clients that use the provisions of Education Code section 17406 as their chosen construction method.

I. SELECTION OF LEASE-LEASE BACK ENTITY

A. NOTICE

As you are aware, Education Code section 17406 authorizes school districts (each, a "District"), without advertising for bids, to enter into a construction agreement and lease with an entity (a "Lease Lease-Back entity") for the construction of school facilities. While a District may use the provisions of Section 17406 without advertising for bids, we believe that it is beneficial for a District to select a Lease-Lease Back entity pursuant to an RFQ process and commonly make this recommendation to our District clients. Under this process a District would select a Lease-Lease Back entity on the basis of demonstrated competence for similar construction projects and on the professional qualifications necessary for the satisfactory performance of the Project. (See, Gov. Code § 4526.) There are no hard and fast rules with regard to providing notice for a public agency RFQ. However, the Public Contract Code, which sets forth the State's requirements for notice of school district construction projects, provides that notice to contractors must be published "once a week for two weeks." (Pub. Contract Code § 20112.)

This published notice must be made in "some newspaper of general circulation published in the district, or if there is no such paper, then in some newspaper of general circulation, circulated in the county." (Id.) We typically recommend that the notice requirements applicable to construction projects be utilized by

State Allocation Board Implementation Committee

November 19, 2003

Page 2

a District to notify potential Lease-Lease Back entities of the District's upcoming Project and its RFQ. Accordingly, the District may publish notice of the issuance of its RFQ in a newspaper of general circulation published within the District's boundaries. If there is no such paper, the District may publish the notice in some newspaper of general circulation published within the County. This notice should be published once a week for two successive weeks.

B. RFQ REVIEW PANEL

Selection of professionals pursuant to an RFQ process can vary greatly from public agency to public agency. Based on our public agency experience, we suggest to our clients that a District's review panel for the selection of a Lease-Lease Back entity should consist of the following:

- 3 or 5 reviewers (we find that it is best to have an odd number of review panel members).
- At least one of the reviewers should not work for the District. For example, we find that it is beneficial to have a colleague from another public agency sit on the District's review panel. This provides an outsider's perspective.

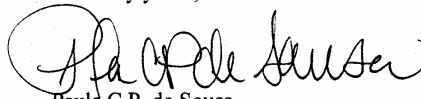
II. SELECTION OF SUBCONTRACTORS

While nothing requires the selected Lease-Lease Back entity to select subcontractors pursuant to a competitive bidding process, we recommend to our clients that a District require the selected Lease-Lease Back entity, by contract, to select subcontractors through some form of competition. This is due to the fact that the District will be financing the projects with public funds.

There are several variations of language included in Lease-Lease Back contracts regarding competitive selection of subcontractors. Some require that the Lease-Lease Back entity select subcontractors by receiving competitive quotes, while others require strict compliance with the Public Contract Code, unless certain specified circumstances are presented.

Please let us know if you have any questions regarding the above information.

Sincerely yours,



Paula C.P. de Sousa

Warren B. Diven

of BEST BEST & KRIEGER LLP

PDS:seb

ATTACHMENT B

Potential Regulatory Amendments
Implementation of Lease Lease-Back Regulations
State Allocation Board Implementation Committee Meeting, January 8, 2004

1859.23 SFP Application for Funding of Projects Leased Under the Provisions of Education Code Section 17406.

A district may receive funds for facilities that have been constructed or modernized, or will be constructed or modernized, under a lease agreement pursuant to Education Code 17406 provided that the district has title to the site and all of the following are met:

- a) ~~The project costs are financed by the developer of the district owned site.~~
- a) The lease agreement creates no immediate indebtedness for the aggregate installments and confines the district's liability to each annual installment as it falls due.
- c) ~~The lease agreement was signed at a time when state funding was not available for the project.~~
- b) The lease agreement contains or will contain a purchase option that, when exercised, shall terminate the lease.
- c) The title of all improvements shall vest with the district no later than 180 days after either receiving an adjusted grant apportionment from the Board or filing of the last notice of completion for the project, whichever is later.
- d) State bonds funds including the district's local matching share required pursuant to Section 1859.77.1 or 1859.79 shall not be used for lease or rental payments on the project.
- e) All requirements of Chapter 12.5 have been met including but not limited to compliance with SFP Regulation Section 1859.70 and Labor Code Section 1771.7.

ATTACHMENT C

CALIFORNIA CODES
EDUCATION CODE
Section 17070.71

17070.71. (a) Notwithstanding subdivision (a) of Section 17070.70, new construction or modernization funded pursuant to this chapter may be upon real property leased to the applicant school district if all of the following conditions are met:

- (1) The property is leased from another governmental entity.
- (2) The term of the lease is for at least 40 years after approval of the project under this chapter, or the school district has a lease for at least 25 years on federal property. The board may authorize a lesser term, of not less than 30 years only if the board finds that granting an exception to this requirement would be in the state's best interest.
- (b) The applicant school district, and the facility on leased land, if any, shall comply with all laws pertaining to the construction, reconstruction, or alteration of, or addition to, school sites and school buildings.
- (c) Lease costs are not eligible project or site acquisition costs under this chapter.

CALIFORNIA CODES
EDUCATION CODE Part 10.5, Chapter 4, Article 2
SECTION 17400-17429

17400. (a) Any school district may enter into leases and agreements relating to real property and buildings to be used by the district pursuant to this article.

(b) As used in this article, "building" includes each of the following:

- (1) One or more buildings located or to be located on one or more sites.
- (2) The remodeling of any building located on a site to be leased pursuant to this article.
- (3) Onsite and offsite facilities, utilities or improvements which the governing board determines are necessary for the proper operation or function of the school facilities to be leased.
- (4) The permanent improvement of school grounds.

(c) As used in this article, "site" includes one or more sites, and also may include any building or buildings located or to be located on a site.

17401. As used in this article "lease or agreement" shall include a lease-purchase agreement.

17402. Before the governing board of a school district enters into a lease or agreement pursuant to this article, it shall have available a site upon which a building to be used by the district may be constructed and shall have complied with the provisions of law relating to the selection and approval of sites, and it shall have prepared and shall have adopted plans and specifications for the building that have been approved pursuant to Sections 17280 to 17316, inclusive. A district has a site available for the purposes of this section under any of the following conditions:

(a) If it owns a site or if it has an option on a site that allows the school district or the designee of the district to purchase the site. Any school district may acquire and pay for an option containing such a provision.

(b) If it is acquiring a site by eminent domain proceedings and pursuant to Chapter 6 (commencing with Section 1255.010) of Title 7 of Part 3 of the **Code** of Civil Procedure, the district has obtained an order for possession of the site, and the entire amount deposited with the court as the probable amount of compensation for the taking has been withdrawn.

(c) In the case of a district qualifying under Section 17410, if it is leasing a site from a governmental agency pursuant to a lease having an original term of 35 years or more or having an option to renew that, if exercised, would extend the term to at least 35 years.

17403. The term of any lease or agreement entered into by a school district pursuant to this article shall not exceed 40 years.

17404. Sections 17455 to 17480, inclusive, shall not apply to leases made pursuant to this article.

17405. Any lease or agreement shall be subject to the following requirements:

(a) A building or structure that is to be used for school purposes shall be subject to the provisions of Article 3 (commencing with Section 17280) and Article 6 (commencing with Section 17365). A building or facility used by a school district under a lease or lease-purchase agreement into which neither pupils nor teachers are required to enter or that would be excluded from the definition of "school building," as contained in Section 17368, shall not be considered to be a "school building" within the meaning of Section 17283.

(b) Subdivision (a) shall not apply to trailer coaches used for classrooms or laboratories if the trailer coaches conform to the requirements of Part 2 (commencing with Section 18000) of Division 13 of the Health and Safety **Code**, and the rules and regulations promulgated thereunder concerning mobilehomes, are not expanded or fitted together with other sections to form one unit greater than 24 feet in width, are used for special educational purposes, and are used by not more than 12 pupils at a time, except that the trailer coaches may be used by not more than 20 pupils at a time for driver training purposes.

(c) The site on which a leased relocatable structure is located shall be owned by the school district, or shall be under the control of the school district pursuant to a lease or a permit.

"Relocatable structure" is any structure that is designed to be relocated.

(d) For purposes of interconnection of fire alarms, buildings leased for 24 months or less shall be subject to Section 809 of the Uniform Building **Code** until applicable regulations proposed by the State Fire Marshal are adopted as part of Title 24 of the California **Code** of Regulations.

(e) Notwithstanding any other provision of law, this section shall become operative on September 30, 1997.

17406. (a) Notwithstanding Section 17417, the governing board of a school district, without advertising for bids, may let, for a minimum rental of one dollar (\$1) a year, to any person, firm, or corporation any real property that belongs to the district if the instrument by which such property is let requires the lessee therein to construct on the demised premises, or provide for the construction thereon of, a building or buildings for the use of the school district during the term thereof, and provides that title to that building shall vest in the school district at the expiration of that term.

The instrument may provide for the means or methods by which that title shall vest in the school district prior to the expiration of that term, and shall contain such other terms and conditions as the governing board may deem to be in the best interest of the school district.

(b) Any rental of property that complies with subdivision (a) shall be deemed to have thereby required the payment of adequate consideration for purposes of Section 6 of Article XVI of the California Constitution.

17407. The governing board of any school district may enter into an agreement with any person, firm, or corporation under which that person, firm, or corporation shall construct, or provide for the construction of, a building to be used by the district upon a designated site and lease the building and site to the district. The instrument shall provide that the title to the building and site shall vest in the district at the expiration of the lease, and may provide the means or method by which the title to the building and site shall vest in the district prior to the expiration of the lease, and shall contain such other terms and conditions as the governing board of the district deems to be in the best interest of the district.

The agreement entered into shall be with the lowest responsible bidder who shall give the security that any board requires. The board may reject all bids. For the purpose of securing bids the board shall publish at least once a week for two weeks in some newspaper of general circulation published in the district, or if there is no paper, then in some paper of general circulation circulated in the county, a notice calling for bids, stating the proposed terms of the agreement and the time and place where bids will be opened.

17408. The governing board of a school district shall call and hold an election, pursuant to Section 17409 or 17412, before or after entering a lease or agreement, as the case may be, except that if the lease or agreement does not effect an increase in the existing applicable maximum tax rate of the district, the election requirements of this section shall not apply.

17409. Before entering into a lease or agreement pursuant to this article, the governing board of the district shall call, hold, and conduct an election in the manner provided in Section 42202, except that the ballot used in the election shall contain substantially the words: "Shall the governing board of the ____ District purchase (a site, sites) prepare plans and specifications, (the reference to the site or sites and plans and specifications shall not be included if, prior to calling the election, the governing board of the district has acquired a site or sites or proposes to lease a site or sites and has prepared plans and specifications) and lease (a site and, sites and) (a building, buildings) to be constructed for use by the school district (designating the location of the site or sites on which the building or buildings will be constructed and generally describing the building or buildings), and, for such purposes, shall the maximum tax rate of the district be increased by not to exceed ____, such increase to be in effect in the ____ District for the years 19__ to __, be authorized and the amount of such increase used solely and exclusively for such purposes?"

17410. (a) If, at an election held pursuant to Section 17409, or the predecessor to that section, a majority of the electors voting on the proposition voted "Yes," the governing board may call an election pursuant to this section.

Before entering into one or more leases or agreements pursuant to this section and this article, the governing board of the district shall call, hold, and conduct an election in the manner provided in Section 42202 of the **Education Code**, as it existed on December 31, 1979, except that the ballot used in the election shall contain substantially the words: "Shall the governing board of the _____ District purchase (a site, sites) prepare plans and specifications (the reference to the site or sites and plans and specifications shall not be included if, prior to calling the election, the governing board of the district has acquired a site or sites or proposes to lease a site or sites or has prepared plans and specifications) and lease (a site, sites) and (a building, buildings) to be constructed for use by the school district (designating the location of the site or sites on which the building or buildings will be constructed and generally describing the building or buildings) and for those purposes, shall the tax rate increase authorized on (the date of the original election), be used solely and exclusively for those purposes in addition to those approved by the majority of electors at the election held pursuant to Section 17409, or the predecessor to that section, on (the date of the original election)?"

If, at the election held pursuant to this section, a majority of the electors voting on the proposition vote "Yes," the governing board may proceed pursuant to this article to use that previously authorized tax increase for the purpose or purposes authorized under that election.

(b) It is the intent of the Legislature, in enacting this section, to permit the levy of a tax to the extent authorized at an election held pursuant to Section 17409, or the predecessor to that section, as modified to permit the proceeds of that tax to be expended for the purposes authorized at the election held pursuant to subdivision(a).

17411. The governing board of the district, if the district proposes at an election held pursuant to Section 17409 to lease more than one building, may include in the ballot measure used in the election a statement that the district reserves the right to lease less than all of the proposed buildings designated in the ballot measure. If such a statement is included in the ballot measure, the governing board may at any time thereafter determine to not lease one or more of the buildings included in the ballot measure, and such determination shall not breach any obligation of the district to the voters of the district.

17412. An election held pursuant to Section 17409 or Section 17413 shall be held in conjunction with either a statewide primary or general election, or an election date specified in Section 2500 of the Elections **Code**.

17413. In lieu of calling an election pursuant to Section 17409, the governing board of a school district may call an election pursuant to this section. Within 10 days after the governing board has opened the proposals pursuant to Section 17417 or has adopted a resolution pursuant to Section 17418 it may accept a proposal, if proceeding under Section 17417, and execute the lease or agreement, and immediately thereafter call an election pursuant to this section.

The governing board of the district shall call, hold, and conduct an election in the manner provided in Section 42202, except that the ballot used in the election shall contain substantially the words: "Shall the governing board of the ____ District lease (a site (sites) and) a building (buildings) to be constructed for use by the school district (designating the location of the site or sites on which the building or buildings will be constructed, and generally describing the building or buildings and the cost thereof), and, for such purposes, shall the maximum tax rate of the district be increased by not to exceed ____, such increase to be in effect in the ____ District for the years 19__ to ____, be authorized and the amount of such increase used solely and exclusively for such purposes?"

17414. If, at the election held pursuant to Section 17409 or Section 17413, a majority of the electors voting on the proposition vote "Yes," the governing board may proceed pursuant to this article.

17415. Whenever the electors of a school district, at an election held pursuant to Section 17409 or 17413, have approved an increase in the maximum tax rate of the district for the purpose of enabling the district to enter into a lease or agreement for a site or building, or both, and before the lease or agreement is entered into, or during the term of the lease or agreement, territory is taken from the district and annexed to or included in another district by any means, the acquiring district shall automatically assume and shall pay to the district from which the territory is transferred a proportionate share of any remaining payments due under the lease or agreement, as the payments become due, for so long as the lease or agreement runs.

The acquiring district's proportionate share shall be in the ratio which the total assessed valuation of taxable property in the transferred territory bore to the total assessed valuation of taxable property in the whole district from which the territory is transferred for the year immediately preceding the date on which the transfer became effective for all purposes.

This section shall be applicable only with respect to transfers of school district territory which become effective for all purposes after the effective date of enactment of this section, and shall be applicable whether the election under Section 17409 or 17413 occurred prior to or after the effective date of this section.

17416. (a) Unless the time allowed for the governing board to enter into the lease agreement is extended pursuant to subdivision (b), if the governing board of the district fails to enter into a lease pursuant to this article within three years after an election, held pursuant to Section 17409, at which a majority of the votes cast favors the proposition submitted, the authorization for an increase in the maximum tax rate shall become void.

(b) If litigation is filed challenging in any way the election held pursuant to Section 17409 or the competitive bidding proceedings or contract for the construction of the building to be used by the district; compliance with the California Environmental Quality Act; or the validity of or the proceedings for the issuance of any bonds, notes, warrants, or other evidences of indebtedness of a nonprofit corporation to be sold to finance construction of the building, the authorization for an increase in the maximum tax rate shall not become void because of the failure of the governing board to enter into a lease pursuant to this article until three years after the date upon which this subdivision becomes effective.

This subdivision shall apply only to school districts which had an average daily attendance of 65,000 or more in the 1975-76 fiscal year.

17417. After the governing board of a school district has complied with Section 17402, it shall, in a regular open meeting, adopt a resolution declaring its intention to enter into a lease or agreement pursuant to this article. The resolution shall describe, in any manner to identify it, the available site upon which the building to be used by the district shall be constructed, shall generally describe the building to be constructed and state that the building shall be constructed pursuant to the plans and specifications adopted by the governing board therefor, shall, if that is the case, state the minimum yearly rental at which the governing board will lease real property belonging to the district upon which the building is to be constructed, and shall state the maximum number of years for which the school district will lease the building or site and building, as the case may be, and shall state that the proposals submitted therefor shall designate the amount of rental, which shall be annual, semiannual, or monthly, to be paid by the school district for the use of the building, or building and site, as the case may be. The resolution shall fix a time, not less than three weeks thereafter for a public meeting of the governing board to be held at its regular place of meeting, at which sealed proposals to enter a lease or agreement with the school district will be received from any person, firm, or corporation, and considered by the governing board. Notice thereof shall be given in the manner provided in Section 17469.

At the time and place fixed in the resolution for the meeting of the governing body, all sealed proposals which have been received shall, in public session, be opened, examined, and declared by the board. Of the proposals submitted which conform to all terms and conditions specified in the resolution of intention to enter a lease or agreement and which are made by responsible bidders, the proposal which calls for the lowest rental shall be finally accepted, or the board shall reject all bids. The board is not required to accept a proposal, or else reject all bids, on the same day as that in which the proposals are opened.

17418. (a) As an alternative to obtaining sealed proposals as required by Sections 17407 and 17417, the governing board may, in a public meeting, adopt a resolution declaring its intention to enter into a lease or agreement pursuant to this article with a nonprofit public benefit corporation organized under the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations **Code**) if the articles of incorporation or bylaws of the nonprofit public benefit corporation provide both of the following:

- (1) That no person shall be eligible to serve as a member or director of the corporation except a person initially approved by resolution of the governing board of the school district.
 - (2) That no part of the net earnings of the corporation shall inure to the benefit of any member, private shareholder, individual, person, firm or corporation excepting only the school district.
- (b) The resolution adopted by the governing board shall do all of the following:
- (1) Describe, in a manner to identify it, the available site upon which the building to be used by the district shall be constructed.
 - (2) Generally describe the building to be constructed and state that the building shall be constructed pursuant to the plans and specifications adopted by the governing board therefor.
 - (3) If that is the case, state the minimum yearly rental at which the governing board will lease real property belonging to the district upon which the building is to be constructed.

(4) State the maximum number of years for which the school district will lease the building, or building and site, as the case may be.

(c) Any building constructed by a nonprofit public benefit corporation pursuant to a lease or agreement entered into pursuant to this section shall be constructed under a contract awarded to the lowest responsible bidder pursuant to Article 42 (commencing with Section 20670) of Part 3 of Division 2 of the Public Contract **Code**. Section 17424 applies to the contract.

17419. Any bonds, notes, warrants, or other evidences of indebtedness to be issued by a nonprofit corporation to finance the construction of a building pursuant to a lease or agreement entered into pursuant to Section 17418 shall be sold pursuant to Chapter 10 (commencing with Section 5800) of Division 6 of Title 1 of the Government **Code**.

17420. All bonds, notes, warrants or other evidences of indebtedness referred to in Section 17419 and the interest thereon, and all bonds, notes, warrants, or other evidences of indebtedness issued to refinance any bonds, notes, warrants, or other evidences of indebtedness referred to in Section 17419 and the interest thereon, are exempt from all taxation in the state other than inheritance, gift and franchise taxes.

17421. Any building constructed for the use of a school district pursuant to this article is subject to Sections 17280 to 17313, inclusive.

17422. For the purposes of Sections 15102 and 15106 and Chapter 6 (commencing with Section 16000) of Part 10, 50 percent of any remaining payments for use of the building or site and building which would become due from the district under any leases and agreements entered into by the district pursuant to this article, if the leases and agreements were to run their full term, shall be considered outstanding bonded indebtedness.

17423. No district shall enter into any lease or agreement pursuant to this article if at the time 50 percent of any remaining rental payments for use of the building or site and building which would become due from the district pursuant to this article, including the lease or agreement to be entered into, if the leases and agreements were to run their full term, plus the total amount of district bonded indebtedness outstanding at the time, shall exceed 7.5 percent for elementary school districts and high school districts and 12.5 percent for unified school districts of the taxable property of the district as shown by the last equalized assessment of the county or counties in which the district is located. For the purpose of this section, the taxable property of the district shall be determined upon the basis that the district's assessed value has not been reduced by the exemption of the assessed value of business inventories in the district or reduced by the homeowners' property tax exemption.

17424. The governing board of the school district shall obtain the general prevailing rate of per diem wages from the Director of the Department of Industrial Relations for each craft, classification or type of workman needed for the construction of the building and shall specify in the resolution and in the notice, required by Section 17417, or in the resolution required by Section 17418 and in the lease or agreement made pursuant to this article, what the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality is for each craft, classification or type of workmen needed for the construction of the building. The holidays upon which such rate shall be paid need not be specified by the governing board, but shall be all holidays recognized in the collective bargaining agreement applicable to the particular craft, classification or type of workmen employed on the project.

Any agreement or lease entered into pursuant to this article shall require that such general prevailing rates will be paid. It shall also require that work performed by any workman employed upon the project in excess of eight hours during any one calendar day shall be permitted only upon compensation for all hours worked in excess of eight hours per day at not less than 1 1/2 times the basic rate of pay. There may also be included in leases or agreements entered into pursuant to this article any other requirements with respect to matters related to the subject of this section which the governing board deems necessary or desirable.

17425. The provisions of this article prevail over any provisions of law which conflict therewith.

17426. All acts and proceedings taken prior to the effective date of the enactment of this section, by or on behalf of any district under this article, or under color of this article, for the authorization of an increase in the maximum tax rate of the district and for the leasing of a building or buildings for the purposes of the district are hereby confirmed, ratified, validated, and declared legally effective. This shall include all acts and proceedings of the governing board of the district and of any person, public officer, board, or agency, heretofore done or taken upon the question of the authorization of the tax rate increase or the leasing. Whenever an election has been called and held prior to the effective date of the enactment of this section, for the purpose of submitting to the voters of any district the question of an increase in the maximum tax rate of the district and for the leasing of a building or buildings for the purposes of the district, the election and all proceedings attendant thereon are hereby confirmed, ratified, validated, and declared to be legally effective for all purposes, and the tax rate increase, if authorized by the required vote and in accordance with the proceedings heretofore taken, shall be a legal and valid authorization, in accordance with its terms, and any tax heretofore or hereafter levied pursuant to that authorization shall be legal and valid. The foregoing provisions of this section shall operate to supply any legislative authorization that may be necessary to validate the acts and proceedings heretofore taken which the Legislature could have supplied or provided for in this article. The foregoing provisions of this section shall be limited to the validation of acts and proceedings to the extent to which the same can be effectuated under the California and United States Constitutions.

The foregoing provisions of this section shall not operate to confirm, ratify, validate, or legalize any act, proceeding, or other matter the legality of which is being contested or inquired into in any legal proceeding now pending and undetermined or which may be pending and undetermined during the period of 30 days from and after the effective date of this section, and shall not operate to confirm, ratify, validate, or legalize any act, proceeding, or other matter which has heretofore been determined in any legal proceeding to be illegal, void, or ineffective.

In any school district in which an election was called and held prior to the effective date of this section in which the voters of the district authorized an increase in the maximum tax rate of the district and the leasing of a building or buildings for the purposes of the district, the law in effect at the date of the school district election shall govern the terms of the lease, the terms of the sale of related bonds, notes, and warrants, and the school district's maximum bonded indebtedness, and Section 17423 shall not be applicable to the school district's entry into any lease or agreement authorized at an election called and held prior to the effective date of this section.

17427. The State Allocation Board shall consider community school pupils housed in leased facilities that do not conform to the requirements of Part 2 (commencing with Section 2-101), Part 3 (commencing with Section 3-089-1), Part 4 (commencing with Section 4-403), and Part 5 (commencing with Section 5-102), of Title 24 of the California **Code** of Regulations as unhoused for the purposes of determining priority for the leasing of portable classrooms pursuant to Chapter 14 (commencing with Section 17085) of Part 10.

17428. The governing board of a school district may lease property in an adjoining school district for garage, warehouse, or other utility purposes or may purchase property in an adjoining school district for those purposes and may dispose of the property in the same manner as property within the boundary of the district is purchased and disposed of.

The power of eminent domain shall not be applicable and the acquisitions by purchase shall be subject to the approval of the governing board of the school district in which the property is located.

17429. (a) This section shall apply only to a school district in which the electorate authorizes an increase in the maximum tax rate of the district pursuant to this article for the lease of one or more schools, and there exists at the time of the election on a site owned by the district a school facility not owned by the district meeting all of the requirements of Article 3 (commencing with Section 17280) of this chapter, which site and school facility are designated and described in the ballot proposition approved by the voters.

(b) Notwithstanding any other law, a school district may lease from a California nonprofit corporation an existing school and may pay rentals therefor from funds derived from the increase in the maximum tax rate approved by the voters at an election. The purchase price of the school paid by the nonprofit corporation to the owners of the school shall not exceed the actual audited cost of construction thereof including actual interest paid on money borrowed to finance such construction. Prior to the purchase of the school by the nonprofit corporation, an independent certified public accountant shall be retained by the school district to verify the actual cost of construction and any interest paid to finance the construction, and the nonprofit corporation may conclusively rely upon any certificate or opinion setting forth the actual cost of construction and the interest prepared by the independent certified public accountant.

(c) A school district, the electorate of which, prior to the effective date of this section, authorized an increase in the maximum tax rate in the manner, for the purposes, and under the circumstances specified in subdivision (a), may avail itself of the authority afforded by subdivision (b).